

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 701.

**BOARD OF TRADE OF THE CITY OF CHICAGO, JOHN HILL,
JR., REUBEN G. CHANDLER, ET AL., APPELLANTS,**

vs.

**CHARLES F. CLYNE, UNITED STATES DISTRICT ATTOR-
NEY FOR THE NORTHERN DISTRICT OF ILLINOIS;
HENRY C. WALLACE, SECRETARY OF AGRICULTURE,
AND ARTHUR C. LUEDER, UNITED STATES POST-
MASTER AT THE CITY OF CHICAGO.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.**

FILED NOVEMBER 20, 1922.

(29,251)

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable George A. Carpenter, District Judge of the United States for the Northern District of Illinois, on Friday, the seventeenth day of November, in the year of our Lord one thousand nine hundred and twenty-two, being one of the days of the regular November term of said court, begun Monday, the sixth day of November, and of our Independence the 147th year.

Present:

Honorable George A. Carpenter, District Judge.
Robert R. Levy, U. S. Marshal.
John H. R. Jamar, Clerk.

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 3046.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Be it remembered that heretofore, to-wit: on the 30th day of October, 1922, came the above named complainants, by their solicitors, and filed *its* Bill of Complaint, as follows:

3 3046.

In the District Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery.

3046.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Bill of Complaint.

Robbins, Townley & Wild, Solicitors for Complainants.
Henry S. Robbins, Counsel.

(Endorsed:) Filed Oct. 30, 1922. John H. R. Jamar, Clerk.

4 & 5 In the District Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

To the Honorable the Judges of said Court in Chancery Sitting:

Your orators, The Board of Trade of the City of Chicago (hereinafter called the "Exchange") and John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser, and Alonzo B. Lord, hereinafter called the "co-complainants," (who join with said Exchange in bringing this bill in their own behalf and in behalf of all other members of said Exchange who may wish to join therein or share in the relief granted herein) bring this bill of complaint against Charles F. Clyne, as, and who is, United States District Attorney for the Northern District of Illinois, Henry C. Wallace as, and who is, Secretary of Agriculture of the United States, and Arthur C. Lueder, as, and who is, United States Postmaster at the City of Chicago, and allege:

6 1. That said Exchange is a corporation organized under a special charter granted by the State of Illinois, February 18, 1859, by which certain persons before that date residing in the City of Chicago and engaged there in the purchase and sale of grain were created a corporation, and were given power to admit such persons as members and expel such members as said corporation might see fit, and also power to adopt and maintain such rules, regulations and by-laws as said corporation might think proper for the management of the business of its members and the mode in which it should be transacted; and said corporation was also authorized to appoint committees of arbitration for the settlement of such matters of difference as might be submitted by members of said Exchange or others; and said charter also provided that any award in such arbitration, when filed in any Circuit Court of said state, should have the force and effect of a judgment, upon which an execution might issue as upon other judgments; and by said charter said corporation was also given power to appoint such persons as they may see fit to examine, measure, weigh, gauge, or inspect flour, grain and other articles of produce or traffic commonly dealt in by the members of said corporation, and the certificate of such appointee as to quality or quantity of any such article, or its brand or mark was made evidence between any buyer and seller assenting to the employment of such appointee, a copy of which charter is hereto attached and made a part hereof as Exhibit "A."

2. That upon the granting of said charter said grantees thereof adopted and declared the objects of said Exchange to be:

"To maintain a Commercial Exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information; and, generally, to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits,"

and to accomplish these objects the members of said Exchange adopted, and have for many years maintained certain regulations governing the inspection of flour, grain, provisions, hay, the cutting and packing of hog products, the grading and inspection of flaxseed, the regulation of grain warehouses, whose receipts shall be made regular for delivery on grain contracts, the sampling of grain, the storage of provisions, the management of a clearing house maintained by said Exchange for the convenience of its members, a weighing of grain, the maintenance of a Custodian Department respecting commodities dealt in, the distribution of market records and reports, and other like matters. And the Exchange has adopted, and now maintains, a set of rules which provide for the admission and expulsion of members and govern the relations of its said members to said Exchange and to each other, and also the manner in which the business of its members should be transacted, which rules also vest (subject to said rules) the government of said Exchange and the management of its business and financial concerns in a board of eighteen directors, one of whom shall be president of said Exchange; and said rules further provide that said board of directors shall annually assess against each of its members an amount, which in the aggregate will be sufficient to meet all the expenditures of said Exchange. And other rules regulate the making by its members of contracts for future delivery of grain, one of which requires that such contracts must be made in the open market in its exchange hall during certain hours for regular trading, and others fix the grades of grain which shall be deliverable upon said future contracts and provide that the several different grades of grain shall be deliverable upon such contracts at a fixed premium or discount in price; and another of said rules provides that in case any property contracted for future delivery is not delivered at the maturity of the contract, a committee shall be appointed from the membership to determine as nearly as possible the true commercial value of the commodity in question on the day of the maturity of the contract, and that the price so established shall be the basis upon which settlements of such defaults shall be made, and making it the duty of the committee, in thus determining the true commercial value of the commodity, to ascertain its value in other established markets, or for manufacturing or consumptive purposes in this country, together with such facts as may justly enter into the determination of its value, and also providing that as liquidated damage the seller shall pay to the purchaser not less than one per

cent nor more than ten per cent of the value of the commodity as established by said committee, and further providing that in case any property contracted for future delivery is not received and paid for, it shall be the duty of the seller to establish his claim on the purchaser by selling said property on the market within twenty-four hours thereafter. And certain of its said rules, which are material in this controversy, are set out in Exhibit "B" attached to this bill and made a part thereof.

3. That among the rules so adopted and now in force are some providing that, whenever any member should default on a business contract or in the payment of any award made in any arbitration, or should be guilty of certain other misconduct, he should be suspended by the board of directors from all the privileges of membership, and that in case any member shall be guilty of certain other graver offenses, such as bad faith, or an attempt at extortion

9 or other dishonest conduct, he shall be expelled from the Exchange; but that written charges shall be filed with the board of directors specifying the offense charged, of which the member shall have notice and a hearing before such suspension or expulsion; and that one of said rules (see Section 1, Rule X in Exhibit B) provides that any male person of good character and credit may be admitted to membership by the board of directors upon approval by at least ten of its directors and upon payment of an initiation fee of twenty-five thousand dollars, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-laws of the Exchange, and all amendments that may be made thereto, which agreement has been signed by all who have become members and reads as follows:

"We, the undersigned members of the Board of Trade of the City of Chicago, do, by our respective signatures and by virtue of our membership in said corporation, hereby mutually agree and covenant with each other and with the said corporation, that we will, in our actions and dealings with each other and with the said corporation, be in all respects governed by and respect the rules, regulations and by-laws of the said corporation as they now exist, or as they may be hereafter modified, altered or amended."

That said Exchange does not admit, and never has admitted, to membership any corporation; but one of its said rules provides that, if any two members of said Exchange are executive officers and bona fide and substantial stockholders of any corporation, it may become a party to such trades or contracts as are made in the exchange hall of said Exchange, but that in that event said two members shall be subject to be disciplined for any default in the execution of any such trade or contract of said corporation in the same manner as they are subject to be disciplined for failure to comply with

10 the terms of any business obligation of their own; and that said Exchange now has 1,600 members, and that all of the co-complainants are members in good standing of said Exchange.

4. That yearly since 1859 said Exchange has levied an assessment upon all its members more than sufficient, with the moneys received from its other incidental sources of revenue, to meet all its ordinary expenses, and with such surplus of its said revenue it has acquired, and now owns in fee, real estate in the business district of Chicago, upon which it has constructed a large building, which provides it with an exchange room and offices and also surplus space, from which said Exchange derives a substantial rental; and that the fair market value of such real estate and building, over and above a mortgage thereon, exceeds \$2,000,000, and that said Exchange now raises each year by assessments upon its members as aforesaid, more than \$240,000 for the purpose of maintaining itself and said building.

5. That the Exchange does not enter, and never has entered, into any commercial transactions of any kind whatever for profit; nor does it pay, or seek to pay, any dividends to its members; that its chief purpose and function is to provide an exchange room where its members may meet daily between certain market hours and make with each other contracts for the purchase and sale of grain and other products of the farm, and also to prescribe, and enforce, rules respecting the terms of such contracts and to enforce, by disciplinary proceedings when necessary, compliance by its members with their said contracts, and for the settlement of disputes arising between its members out of their trades, and that about the only other function of said Exchange is to determine who are fit persons, as respects character and financial responsibility, to be and remain its members.

11 That the Exchange does not deliver, and never has delivered, for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication, any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery; that it does cause to be collected each business day the first price and each change in price made in the contracts for present and future delivery, which are entered into by its members in its exchange hall during its established market hours, and does cause said quotations to be delivered in the City of Chicago to certain telegraph companies who have agreed to pay, and do pay, said Exchange an agreed compensation therefor, and said prices and quotations so collected and delivered truthfully and accurately represent the course of such prices.

6. That as its main source of revenue is, and always has been, the annual dues paid by its members, it is incumbent upon the said Exchange to make it profitable for persons to become and remain members and pay such yearly assessments; and that, in order to render its disciplinary power over its members sufficiently effective to maintain a high character for business probity among its members, it is also necessary for said Exchange, not only to make it profitable for members to remain such, but also to give a substantial

salable value to such memberships; and that said Exchange seeks to accomplish, and accomplishes, this by

(1) limiting the number of its members as aforesaid;

(2) providing that only members may make transactions in its exchange room;

(3) prescribing, and compelling all its members to conform to, certain fixed reasonable minimum rates of commission, which members, when acting as agents, must charge their principals for making transactions in said exchange hall;

12 and that for this purpose said Exchange has for many years maintained (as do all commercial exchanges), and still maintains and enforces, a rule prescribing the minimum rates of commission (which are reasonable) as respects each of the different kinds of transactions, which each member is required to charge, whenever acting for a principal in any transaction in said exchange hall, but the rate to members is lower than the rate to non-members; and that one of the essential features of this rule is the following provision:

"Rule XIV. * * * F. Any member who, or whose firm or corporation, shall be convicted by the Board of Directors of a violation of the provisions of this rule, or of any evasion thereof by making rebates in prices, by making any contract or observing any contract already made, by furnishing a membership in this Exchange, by giving any bonus, gift, donation, or otherwise, or shall purchase or offer to purchase any grain, seeds, provisions or other commodities consigned to him, them, or it, for sale, or by rendering any other service or concession whatsoever, with the intent to evade in any way directly or indirectly the regular rates of commission or brokerage established by this rule, shall be expelled from this Association."

That the provision for the expulsion of any member violating its said commission rule was first inserted in said rule about the year 1900 and that before such insertion the salable value of its memberships did not exceed \$800, and that since such amendment and its strict enforcement by said Exchange, memberships have been sold to persons desiring to become members for as much as \$11,000 and are now salable for more than \$5,000.

7. That in recent years there have been organized in most of the grain-producing states many so-called farmers' co-operative societies, associations or corporations, and farmers' co-operative elevator companies, with the avowed purpose of enabling such farmers as
13 should become members thereof to market their crops at actual cost, and, if possible, to market their crops through the exchanges at actual cost, and without paying the commissions charged by members of such exchange, the method contemplated to attain this being to make one of the salaried officers of said co-

operative organization a member of the exchange, and through him to sell all the grain produced by members of the co-operative association—he temporarily charging the prescribed commissions—and ultimately rebating back to the members of such organization the aggregate of such commissions (after paying his salary and incidental expense) on the basis of the number of bushels of grain each producer has sold through said organization—such rebates being popularly called “Patronage dividends;” and that on April 18, 1921, there was organized under the laws of Delaware, a corporation known as “U. S. Grain Growers, Inc.,” membership in which is limited to producers of grain; and the promoters of said corporation publicly state that the general purpose of said corporation is the creation of a non-stock, non-profit agricultural organization, which can market at cost grain produced by its members, and which extends the so-called farmers’ co-operative movement farther than co-operative methods have thus far gone.

That the by-laws of such corporation provide for the organization of subsidiary corporations for the carrying out of said purposes, and that the operation of said corporation shall consist of the marketing of the grain of its members, by virtue of contracts with statewide or interstate growers’ associations, farmers’ co-operative elevator companies or with local co-operative associations; the purpose and object sought to be accomplished through said two contracts being

14 that the grain of all growers of grain who sign such contracts with any local elevator company shall, through the co-operation of said local elevator company and said U. S. Grain Growers, Inc., be sold at actual cost, and without the payment of any commissions to members of any of the grain exchanges of the country.

That heretofore members of said co-operative associations have sought (without, however, formal applications) to become members of said Exchange, but said Exchange has refused to admit any such persons to membership, for the reason that the avowed purpose of such applicants has been to rebate back to the members of their organization the aggregate amount of their commissions, less their salary and expenses, and that this would violate and break down said commission rule of said Exchange, and would ultimately destroy the business of such of its members, as consists in the receiving of grain by consignment for sale on commission—the ultimate effect of which would be to much impair, if not destroy, the value of the memberships of said Exchange, and make it difficult for said Exchange to maintain sufficient members who would be willing to pay assessments to meet the expenses of maintaining its said Exchange.

8. That the members of said Exchange engage only in the following different kinds of trading in grain:

(1) Many of them, including some of the co-complainants, act as commission merchants and receive from producers and country grain dealers grain in cars and boats consigned to them, which, as

agents, they sell for immediate delivery, and they account to their principals for the proceeds of such sales less their commissions and other expenses; and many of said members, including some of the co-complainants, acting either as agents or principals, purchase and
15 sell grain in Chicago, which is in cars or elevators, for immediate delivery, all of such transactions being popularly known as "cash" trades.

(2) Many members of said Exchange, including some of the co-complainants, send out in the afternoons, whenever the market conditions are favorable, telegrams and letters to country grain dealers and others non-resident in Chicago, offering to buy grain at a certain named price and to be shipped within a certain named time, if the offer shall be accepted by telegram received by the offering member before the said market hours next morning, such transaction being known to the trade as "contracts to arrive" or "cash sales for deferred shipment;" many members, including some of the co-complainants, also send out, when market conditions are favorable, telegrams and letters to millers and others (non-residents in Chicago) on the consumer's side of the market offering to sell grain at a named price and subject to shipment within a named time, if such offers are accepted with a certain time, transactions of this kind being also known to the trade as "cash sales for deferred shipment."

(3) Many of said members, including some of the co-complainants, daily engage, either as principals or as agents, in the making in said exchange hall of contracts with other members of the Exchange for the purchase and sale of grain for future delivery, said contracts providing that the seller therein shall deliver in Chicago, the grain covered by the contract upon any day of the named month that he shall select. That more than 75 per cent of the volume of all the trading in said exchange hall consists of such trading for future delivery. Such contracts relate almost wholly to wheat, corn and oats, and the volume of such trading is so large, that said Exchange has set aside in its exchange room three
16 separate spaces, upon each of which it has constructed a circular raised platform, commonly known as a "pit," where its members may conveniently, and do daily, gather and make such future contracts with each other by open viva voce bidding; and respecting such trading the rules of said Exchange have for many years required, and now require, that all orders received by members to buy or sell for future delivery must be executed in the open market in its exchange room and only during the hours of regular trading; by reason whereof all such trading in grain for future delivery by members of said Exchange is in fact confined to said exchange room and said market hours; and both buyers and sellers in all said contracts are personally present in the City of Chicago when the contracts are made; and another rule of said Exchange requires that any offer to buy or sell for future delivery when made openly in the exchange room during the hours for regular trading, may be accepted by any other member of said Ex-

change, and that the contract shall be made with the member first accepting said offer.

That many of the members of said Exchange are bankers, officials of railroad and steamship corporations, packers, etc., who find it to their business advantage to be members of said Exchange, but who are not active members thereof; and many more of said members act only as agents and receive from others on consignment shipments of grain to be sold by them as agents, or who act only as agents or brokers of others in the making of future contracts with other members of said Exchange; that none of the members aforesaid makes as principal any of said contracts for future delivery; and that of those members and non-members who as principals do buy or sell grain for future delivery upon said Exchange for the purpose of profiting by the rise or fall of future prices, most of

17 them have not sufficient capital to make, and do not make, or have open at any one time, contracts for future delivery of other than small quantities of grain, and that only a small number of persons have sufficient capital to make, and do make, contracts for the future delivery of large quantities of grain, and a comparatively few of such speculators are members of said Exchange.

9. That all such contracts for future delivery contemplate and provide for the delivery of warehouse receipts instead of the grain, and only of such warehouse receipts as the rules of said Exchange make valid for delivery; that a rule of said Exchange now and for many years in force (see Rule XXI of Exhibit B), provides that only such warehouse receipts shall be deliverable upon contracts for future delivery as shall be issued by warehouses which have complied with the rules, regulations and requirements of said Exchange, and have been by the board of directors of the Exchange declared regular warehouses for the storage of grain; and none of the warehouses thus made regular are located outside of the State of Illinois; and said rules also make it the duty of such board of directors on the first of July in each year to designate the grain elevators or warehouses in Illinois whose receipt shall be deliverable between its members on their contracts for future delivery for the ensuing year; but said rule also provides that said board of directors may declare, as regular elevators, only such elevators or warehouses as have been licensed by the State of Illinois to conduct a public warehouse, pursuant to the provisions of a statute of that state entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain and to give effect to Article XIII of the Constitution of this state," which said act provides that it shall be the duty of every warehouseman of Class "A" to receive

18 for storage any grain tendered him and to mix such grain with other grain of a similar grade received at the same time as near as may be, and such statute further provides that the warehouse receipt issued for such grain so received into said warehouse shall state on its face that the grain mentioned therein has been received into store, to be stored with other grain of the

same grade received about the same time as the date of said receipt; and by said act it is further provided that, when any holder of any such warehouse receipt shall demand the delivery of the grain therein mentioned, said proprietor shall deliver on said receipt such of the grain of that particular grade as was first received by him in store or which had been the longest time in store in his warehouse; and, while said statute provides that, with the consent of any depositor of grain and the proprietor of a warehouse, the particular grain of said depositor may be kept in a bin by itself, apart from that of other owners, and that such bin shall be marked and known as a "separate bin," and that the receipt therefor, shall so state and contain the number of such special bin, grain in Chicago is seldom, if ever, stored in a public warehouse of Class "A" in a special bin, and if so stored the warehouse receipts issued for such grain are not, and never have been, deliverable upon said contracts for future delivery made by members of said Exchange; nor has said Exchange ever declared a regular elevator under said rule any warehouse, which has not been licensed under said statute to conduct a warehouse of Class "A."

10. That at the present time there are twelve warehouses, with an aggregate capacity of 12,950,000 bushels, whose proprietors have received under said statute, licenses to conduct Class "A" warehouses, and which have been declared regular by the Exchange under said Rule XXI, for the year ending July 1, 1923.

19 That the space of each of said warehouses is subdivided into numerous partitions or bins, the capacity of said bins ranging from 2,000 bushels to 7,000 bushels; and that almost all grain is received in Chicago in cars, whose capacity is from 1,500 to 2,000 bushels, and whenever a carload of grain is unloaded into any of said elevators of Class "A," it is immediately carried into one of said bins and is there at once mixed with other grain of like grade already stored in such bin, and thus any individual carload of grain immediately loses its identity upon being received in such warehouse; and when the person, to whom the warehouse receipt is issued for such carload of grain, or his assignee, tenders said warehouse receipt to said warehouseman for the purpose of having the grain therein specified delivered to him, he never gets the identical grain delivered to such warehouse when it issued said receipt.

11. That in this trading for future delivery in the exchange room of said Exchange during any year many millions of bushels of wheat, corn and oats are bought and sold for future delivery, and as respects at least three-quarters of the grain covered thereby, said contracts are fulfilled or settled without any delivery of any warehouse receipts, but are settled through a system of offsetting purchases with sales and the payment of differences in the market prices under a system commonly known as the "ringing" system which is provided for by the rules of said Exchange; and that practically all said remaining future contracts are performed or completed during the month specified for delivery by the delivery by buyers to sellers of warehouse receipts of public warehouses of Class "A" which ware-

houses have been made regular under the said rules of the Exchange.

20 That while said Rule XXI makes grain in cars deliverable on future contracts during the last three days of the delivery month mentioned in said contracts, where receipts are issued by the carrier, it is also provided by said rule that said delivery shall not be complete, and that bills for said grain so tendered shall not be payable, until said grain shall have been unloaded into an elevator which has theretofore been made regular for delivery by said board of directors, and elevator receipts covering said grain shall have been delivered to the buyer; and that the amount of grain in carload lots actually delivered under the provisions of this rule on contracts for future delivery is much less than 1 per cent of the total volume of said trading for future delivery and even a very small percentage of the total quantity of grain actually delivered upon said contracts; and that, while said rule also authorizes said board of directors, when an emergency exists, to provide that grain in cars may be tendered during any business day of the month specified in the contract for future delivery, said rule also provides that such tender shall not be deemed a complete delivery until such grain shall have been unloaded into an elevator made regular by said Exchange and the warehouse receipt therefor shall have been delivered to the buyer; and while said Rule XXI also authorizes said board of directors, when an emergency exists requiring more storage room than can be supplied by the regular elevators, to make other places suitable for the storage of grain regular for storage of grain deliverable under the rules of the Exchange, said Exchange has seldom, if ever, been able to induce proprietors of places otherwise suitable for the storage of grain to qualify under the Warehouse Statute of the State of Illinois for the short period of time during which any such emergency exists, and that the quantity of storage room in Class "A" warehouses declared regular by said Exchange is such that an emergency, such as is contemplated in said rule, rarely occurs in Chicago, and then lasts for only a short period of time, and that at the present time said board of directors of said Exchange have not exercised said emergency powers conferred upon them, and the only grain now deliverable on said future contracts is grain for which warehouse receipts have been issued by said regular elevators, and carloads of grain tendered during the last three days of the delivery month followed by delivery of warehouse receipts when such grain is unloaded into a regular elevator.

21 12. That a large part of the total volume of trading for future delivery in the exchange room of said Exchange above described consists of contracts made by grain merchants, millers and others, who make such contracts only for the purpose of insuring themselves against price fluctuations respecting other like grain owned by them for the purpose of merchandising or shipping to other consuming markets or to manufacture into flour, and that in most cases such contracts for future delivery are fulfilled, not by the delivery of the grain but by the making of counter-contracts to offset against the ones originally made; that another large part of the volume of said

future trading in said exchange hall consists of contracts made by or for so-called speculators, being persons who have capital and make a study of trade conditions affecting prices and endeavor to forecast the future prices of grain and to profit thereby through the making of said contracts for future delivery.

13. That there is produced yearly in the United States more wheat, corn and oats than is consumed within said United States; that from the year 1899 to the year 1913, both inclusive, the number of barrels of wheat-flour exported in any year, as disclosed by the statistics of the United States Department of Commerce, was not less than 8,826,-

000 barrels, and in one of said years the number of barrels
22 exported was 19,716,000; and that during one of said years there was exported 154,856,000 bushels of wheat, and except in one of said years (when there was a failure of the crops), there has been not one of said years in which the amount of wheat exported did not exceed 23,000,000 bushels; and that during one of said years there was exported over 209,000,000 bushels of corn, and in none of said years was there exported less than 26,000,000 bushels of corn and that yearly exports of oats during said years range from over 46,000,000 bushels to 1,000,000 bushels.

That in order to enable its members and their customers to have all obtainable knowledge when making their said contracts for present or future delivery, said Exchange gathers from all parts of the world such data and other information respecting the conditions of growing crops, the visible supply of grain on hand in different countries, the current prices of the different grains prevailing in the different grain markets of the world, etc., as it can obtain—incurring a large expense therein—and it makes such information available to all its members, and through them to their customers.

14. That approximately six-sevenths of all the trading in grains for future delivery upon the exchanges of the United States takes place in the exchange hall of said Chicago Exchange, but that other commercial exchanges which furnish to their members and their customers like facilities for making contracts for future delivery, are located and maintained at Minneapolis, Duluth, Kansas City, St. Louis and Toledo, Ohio; that the members of all of such other exchanges are competing with the members of said Chicago Exchange for the business of making contracts for future delivery for customers and the purchase of cash grain at country points; and
23 many of the members of said Chicago Exchange are also members of some or all of said other exchanges, and they trade in said other exchanges for future delivery when price conditions there, as compared with price conditions on said Chicago Exchange, make it profitable for them to do so; and that the facts above stated, as well as the present supply of available grain and the present and future requirements of the millers and consumers, not only in this country but in different countries of Europe, constitute the elements, which determine from time to time the prices, at which said future trading on said Exchange is transacted.

That everyone who participates in such future trading and in the making of prices therein does so only by so contracting as to incur a financial loss, if he is mistaken in his forecast of the course of future prices of grain; thus the prices prevailing in such future trading on each of said exchanges at any time is the expression of the preponderance of opinion among interested traders as to the future course of the prices of grain; and the rise and fall of prices in such future trading only express the normal operation of the natural law of supply and demand.

15. That, while in former times, when there were only a few participants in said future trading, who had large capital and credit, so-called "corners" in grain did occur at rare intervals, said Exchange has for many years maintained and enforced rules (which are set out in this bill) to prevent the running of such corners; and that by reason of such rules and their enforcement—and perhaps the Sherman Anti-Trust Act—no corners have for the last fifteen years occurred in the future trading in grain on said Exchange, or said other boards of trade; and that no member of said Exchange, or of any of said other boards of trade, has ever been indicted or convicted under any of the statutes, state or federal, which prohibit the running of "corners."

24 That such future trading on this and said other boards of trade has never been successfully resorted to by anyone for the purpose of manipulating or controlling, and thereby depressing, the prices of grain, and that selling for future delivery on said Exchange does not result in, nor have the effect of, causing the prices of grain to be abnormally depressed, or to be other than such as result from the unrestricted operation of the natural laws of supply and demand.

16. That neither said transactions for future delivery nor the prices therein are susceptible to speculation, manipulation or control by any persons; and that sudden or unreasonable fluctuations of prices of grain do not frequently occur as a result of speculation or manipulation or control of, prices, or transactions in said future trading on such exchanges; nor are such fluctuations as do occur in the prices in such future trading detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce. That, on the contrary, such future trading has materially stabilized the prices of grain and caused the fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice on such exchanges; and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products and by-products thereof.

That on the contrary the purchase and sale of grain for future delivery upon said Exchange and said other boards of trade is a distinct benefit to all producers and consumers, and to persons engaged in commerce in grain, in that it enables owners of grain to protect

25 themselves against price fluctuations by the making of "hedging" contracts upon such exchanges; and that, before said owners were able to so "hedge," the grain buyers' profits in moving the grain from the farmers to the foreign markets was from five to eight cents a bushel, which by the elimination of such risk has been reduced to not to exceed two cents a bushel.

That the prices of "cash" grain do not follow, or relatively conform to, the prices of like grains in the contracts for future delivery made on said Exchange or said other boards of trade; but that on the contrary the prices of "cash" are always different from said prices in future trading, and the former prices are at times higher than the latter prices.

17. That the "Future Trading Act" became a law August 24, 1921; that thereafter the co-complainants in this bill requested the board of directors of said Exchange to institute a suit to have such Act adjudged unconstitutional before complying therewith; that the said board of directors declined to do so, and thereupon these co-complainants (together with one Charles E. Gifford, who has since ceased to be a member of said Exchange) filed, on the 25th of October, 1921, in the District Court of the United States for the Northern District of Illinois (on their own behalf and on behalf of all other members of said Exchange who might wish to join therein, or share in the relief granted therein) their bill against said Exchange and those then constituting its board of directors, and also against the defendant herein, Charles F. Clyne, United States District Attorney for the Northern District of Illinois, John C. Cannon, Collector of Internal Revenue for the First District of Illinois—Henry C. Wallace, Secretary of Agriculture, and David H. Blair, Commissioner of Internal Revenue of the United States, were also named as defendants in said bill, but the court acquired no jurisdiction of their persons—and said bill contained the same allegations as are contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of this bill; and in said bill it was charged that Sections 4, 5, 6, 7, 8 and 10 of said Future Trading Act—which contain substantially the same provisions as Sections 4, 5, 6, 7, 8 and 9 of said Grain Futures Act—violated the Constitution of the United States in that they attempted to regulate commerce which was not interstate but purely intrastate in character; and in said bill said co-complainants prayed that each and every of said provisions of said Future Trading Act should be adjudged to violate the Constitution of the United States and to be void, and that an injunction might issue enjoining the defendant Charles F. Clyne, as such District Attorney, from attempting to enforce said Act or collect by suits or prosecutions, or otherwise, any tax, penalty, or fine mentioned in, or imposed by said Act, from any member of said Exchange, and enjoining said Exchange and its officers from qualifying as a contract market under said Act.

26

That thereafter said defendant Clyne, as such District Attorney, entered his appearance in said suit and also his motion to dismiss said complaint on the ground that said bill sought to enjoin the

enforcement of a valid Act of Congress, to wit, the said Future Trading Act; that thereafter, and on the 7th day of November, 1921, said cause came on for hearing in said District Court and said court entered a final decree therein dismissing said bill for want of equity; that thereupon your co-complainants duly perfected their appeal from said decree, and assigned as error that said District Court had erred in not adjudging said provisions of said Future Trading Act unconstitutional and void. That thereafter, and on the 10th day of November, 1921, said appeal was duly docketed in the Supreme Court of the United States, and on the 11th day of January, 1922, said appeal came on for hearing in said court, said Clyne appearing in said court by James M. Beck, Solicitor General of the United States; and that said Beck, introduced into the hearing of said cause in the Supreme Court the reasons which had induced Congress to enact said Future Trading Act, as shown by a statement made to the United States Senate by Senator Capper, who introduced the bill in the Senate and who, as the acting Chairman of the Committee on Agriculture (which made a report recommending the passage of the bill), stated the reasons of said committee why said bill should become a law, and that said statement which was so presented to the Supreme Court was in part as follows:

"Mr. President, if the Members of this body have the opportunity to read the entire record of the hearings before the House committee in January and the same committee in April, and the hearings before the Committee on Agriculture of this body held in May, June and July of this year, I believe that exactly this will be found to be the situation:

First. The market which governs the price paid to the farmers for their wheat and correspondingly the price paid for foodstuffs by our people in general, while controlled largely and necessarily by the law of supply and demand, is, nevertheless, seriously and occasionally affected by the manipulation of prices and by promiscuous and unlimited gambling.

* * * But we are attempting to correct it [speculation] in this bill, not merely because of its immoral character and influence but because of its arbitrary interference with economic laws and its disturbance of the balance that demand and supply of commodities when left to itself brings about. * * * But we know that temporarily, at last, the fictitious demand or fictitious supply created by gambling deals on the exchanges distorts true demand and supply and creates a false price; that it causes, and during the past year has caused violent and unnatural fluctuations; and that when wheat and corn came on the market a year ago the resumption of options dealing was immediately followed by such an orgy of gambling operations as to drive prices within a period of months far below the cost of production. * * *

The purpose of this bill, Mr. President, is to correct some of the evil practices of the professional speculators on the grain exchanges and to authorize supervision of the grain-futures markets, but not to disturb any of their legitimate and useful functions. * * *

Briefly summarized, the evils in the marketing system which this bill undertakes to correct are:

- (a) Market manipulation by large operators.
- (b) Promiscuous and unrestricted speculation in foodstuffs.
- (c) Dissemination of false crop information.

* * * * *

- (e) Arbitrary interference with the law of supply and demand.

* * * * *

Manipulation on the 'short,' or selling, side of the market by big speculators and 'bear raids' by their followers, such as happen every year shortly before or immediately following harvest, play directly into the hands of European importers, who are enabled to buy millions of bushels of wheat in the futures market at a reduced price, which they later exchange for cash wheat. On several occasions during this greatest export year for wheat the raiders of the wheat pit depressed the price of the American crop 12 to 14 cents below the world price, below the cheap wheat of South America.

In playing their game the Chicago wheat gamblers sold something they did not possess to bear down the price of something they did not own. They wrecked the true market, depressed the value of the producer's property, and the big speculators and exporters bought wheat cheaper and cheaper.

* * * In order that there may be no possible doubt that this manipulation of prices exists, I want to read you a few excerpts from the testimony of witnesses before the committees."

(And the statement of said senator contained extracts from the statements of persons who had appeared before said Committee.)

29 "The plain truth, Mr. President, is that through manipulation of the market the big speculators on the Chicago Board of Trade are undoubtedly a powerful factor in fixing the price of the farmer's wheat. They sell large volumes of wheat futures short during a period before harvest when there is no great volume of buying, and the weight of their selling forces the price down. Then, by continually hammering, they hold the price there until the crop movement begins, when hedging sales place sufficient pressure upon the market to enable the speculators to buy back what they sold without advancing the price. * * *

The provisions of the bill if enacted into law will * * * release the law of demand and supply and make these market places subservient to that great law of trade."

That thereafter said Supreme Court, on the 15th day of May, 1922, adjudged that said future trading was intrastate, and not

interstate, commerce, and that the provisions of said Future Trading Act above mentioned were unconstitutional and void because not within the power of Congress to regulate interstate commerce, and that your co-complainants should be granted an injunction against said Exchange and its officers and against said Clyne as District Attorney, and reversed said decree of the District Court and remanded said cause for further proceedings in conformity with the opinion of said Supreme Court, and said mandate being filed in said District Court, that court entered an order redocketing said cause and setting aside its former decree therein, and entered a final decree, wherein it adjudged and decreed that Sections 4, 5, 6, 7, 8 and 10 of said Future Trading Act were in violation of the Constitution of the United States and of no effect whatever, and permanently enjoining the defendant herein Charles F. Clyne as District Attorney as aforesaid from collecting or attempting to collect by suit or prosecution, or otherwise, any penalty or fine mentioned in and imposed

30 by said Act for failure of any member of said Exchange to comply with said Sections 4, 5, 6, 7, 8 and 10 of said Act, which said decree remains in full force and effect; and your orators are advised by their counsel, and believe and claim, that the defendants herein are by reason of said decree and the facts hereinabove stated, estopped to claim or assert in this suit that said future trading is interstate commerce or is not intrastate commerce or that Congress had under the power conferred upon it to regulate interstate and foreign commerce, power to enact any of Sections 4, 5, 6, 7, 8 and 9 of said Grain Futures Act.

18. That prior to the passage of said Future Trading Act and said Grain Futures Act the Committees on Agriculture of Congress (to whom bills for said Acts were referred) did afford to some who favored or opposed the passage of said bills limited opportunities to be heard, but that all of said persons were interested parties and none of them were sworn as witnesses, and no evidence of witnesses under oath was heard by either of said Committees to ascertain whether such future trading or any feature thereof was an obstruction to, or a burden upon, interstate commerce in grain; and that, on the contrary, said statements made before said Committees did not show that the transactions and prices of grain in the future trading on this Exchange, or said other boards of trade, are susceptible to speculation, manipulation or control, nor that sudden or unreasonable fluctuations in prices of grain frequently occur as a result of such speculation, manipulation or control, which are detrimental to the producers or consumers, or to any other persons; but said statements showed that such fluctuations in said prices as do occur are not, and never have been, an obstruction to, or burden upon, interstate commerce in grain or the products or by-products thereof.

31 19. Your orators are advised by their counsel and charge said Grain Futures Act violates the Constitution of the United States in the following, as well as in other, respects:

(1) It violates Section 8 of Article I, and the 10th Amendment, of the Constitution, in that it seeks to regulate commerce which is not interstate, but purely intrastate in character, and which is not in any respect a burden upon, or an obstruction to, interstate commerce.

(2) It violates the 10th Amendment to the said Constitution in that it interferes with the exclusive right of the states to provide for, and regulate, the maintenance of grain exchanges within their borders for the making of contracts for future delivery of grain, which are wholly intrastate transactions.

(3) It seeks to deprive said Exchange and its members of their property without due process of law in violation of the 5th Amendment to the Constitution, in that by compelling the admission to membership in said Exchange of representatives of co-operative associations of producers, it deprives such Exchange and its members of their exclusive right to use their private property, and thereby it will impair the value of said property and all memberships in said Exchange.

(4) It violates the 5th Amendment to said Constitution in that it attempts, by forcing representatives of farmers' co-operative associations into membership of said Exchange, to take the private property of said Exchange and its members for public use without just compensation therefor.

(5) It violates Section 1 of Article III of the Constitution and the 5th Amendment thereto, in that it seeks to deprive members of said Exchange of their liberty without due process of law, in that it makes the violation of any of the provisions of said Act, and any attempt to manipulate the market price of grain, crimes, and constitutes the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, a Commission for the trial of such persons as shall be accused of such crimes, with power, as a punishment therefor, to deprive such offenders of their right to thereafter pursue a lawful vocation; whereas such criminal laws are, under the Constitution, enforceable only in courts created by law and presided over by judges holding office during good behavior.

(6) It violates Section 2 of Article III of the Constitution and the 6th Amendment thereto, in that it creates a crime and provides for a criminal prosecution therefor without according to the accused the right of trial by jury, and the right to be confronted with the witnesses against him.

(7) It violates the 4th and 5th Amendments to the Constitution in that it authorizes unreasonable searches by the Secretary of Agriculture respecting books and papers, which do not relate to any transaction within the commerce power of Congress, and authorizes the inspection by him of books and papers in order to enable him to secure evidence to be thereafter used by him in criminal proceed-

ings under said Grain Futures Act, against the owners of such books and papers.

(8) It violates the 5th Amendment to the Constitution in that it seeks to compel such members and their customers to furnish evidence which may be used in a criminal case against them.

(9) Section 4 of said Act, in so far as it seeks to restrict the use of the mails, is not within the power conferred on Congress to establish post offices and post roads.

(10) Section 4 of said Act, in so far as it seeks to prohibit the transmission by telegraph, etc., from one state to another of offers, orders, confirmations, etc., relating to the making of contracts for future delivery of grain upon your orators' Exchange is not within the commerce power of Congress, and it also violates Section 2 of Article IV of said Constitution.

20. That your orators are informed and believe that said Secretary of Agriculture has announced that he will not designate any exchange as a contract market under said Grain Futures Act, and will not permit any exchange to continue as a contract market thereunder, unless such exchange shall adopt, maintain and enforce against its members the following rules:

"Any member who, under sub-clause (b) of Section 6 of said Grain Futures Act, shall be deprived of the privileges of trading in contract markets, shall be suspended from all privileges of trading on the exchange of this Association for such period as may be specified in the order of the Secretary of Agriculture against such member.

Any member who shall accept, or execute, an order from any person who shall have been deprived of the privilege of trading in contract markets, shall be suspended from all privileges of membership in this Association for such time as the Directors, in their discretion, shall determine."

That said Secretary of Agriculture also announces that he will enforce, as far as it is incumbent upon him to do so, all the provisions of said Grain Futures Act, and that, if any exchange shall refuse to admit to membership any representative of any co-operative association of producers under the terms prescribed by subclause (c) of Section 5 of said Act, he will not designate such exchange as a contract market so long as it refuses to comply with said section, and that, if any exchange, which shall have been theretofore designated by him as a contract market, shall thereafter refuse to admit to membership such representatives in compliance with said clause, he will cause the designation of such exchange as a contract market to be terminated.

34 That said defendant Charles F. Clyne, as such District Attorney, threatens to, and will, enforce all the provisions of said Act, so far as it is incumbent upon him to do so, and that he will prosecute criminally, under section 9 of said Act, all such members

of said Exchange, and their customers, as shall make contracts for future delivery during such period as said Exchanges shall not be designated as a contract market under the terms of said Act.

Your orators further show that said threatened action by said District Attorney and said Secretary of Agriculture will—unless enjoined by this court—subject the members of such Exchange and their customers to many criminal prosecutions and to the payment of many accumulated penalties, and that through fear of such prosecutions many members of said Exchange and their customers will be deterred from making contracts for future delivery upon said Exchange and that thereby a serious disturbance of the grain markets of the country will ensue and many owners of grain will be deprived of the privilege of insuring themselves against price fluctuations through “hedging” contracts on such Exchange, and that thereby irreparable loss will be caused to your orators, the many members of said Exchange, and many others.

21. That as respects each of your orators the amount involved and the matters in dispute in this suit, exclusive of interest and costs, is more than \$3,000.

Forasmuch, therefore, as your orators are remediless in the premises except in a court of equity, and to the end that said Charles F. Clyne, as United States District Attorney, as aforesaid, Henry C. Wallace, as Secretary of Agriculture, and Arthur C. Lueder, as United States Postmaster in the City of Chicago, may be required to make direct, true and complete answer to this bill, but not
 35 under oath (answers under oath being hereby waived); and that each and every provision of said Grain Futures Act be adjudged to violate the Constitution of the United States and to be void, and that a temporary injunction may immediately issue, and upon final hearing be made permanent, enjoining and restraining said Charles F. Clyne, as District Attorney, as aforesaid, from attempting to enforce said Act or to prosecute, criminally or otherwise, under Section 9 of said Grain Futures Act, any member of said Exchange or any customer of said member; and enjoining said Henry C. Wallace, as Secretary of Agriculture, from enforcing or attempting to enforce, against said Exchange or any of its members or their customers any of the provisions of said Act; and also enjoining said Arthur C. Lueder, as said Postmaster, from complying with said Act or interfering with any of the mail passing to or from members of said Exchange and customers of said members, and that your orators may have such other and further relief as to your Honors shall seem meet.

May it please your Honors, to grant unto your orators a preliminary and permanent injunction against said defendants as above prayed, and also a writ of subpoena of the United States directed to said Charles F. Clyne, as United States District Attorney for the Northern District of Illinois, Henry C. Wallace, as Secretary of Agriculture, and Arthur C. Lueder, as United States Postmaster at the City of Chicago, commanding them on a day certain to appear and

answer this bill, and to abide by and perform such decree as may be entered by this court.

ROBBINS, TOWNLEY & WILD,
Solicitors for Complainants.

HENRY S. ROBBINS,
Counsel.

36 STATE OF ILLINOIS,
County of Cook, ss:

John R. Mauff, being duly sworn, says that he is the Secretary of the Board of Trade of the City of Chicago, one of the complainants in the above entitled bill, and that he has read said bill and knows the contents thereof, and that all the allegations of said bill are true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

JOHN R. MAUFF.

Subscribed and sworn to before me, a notary public in and for said County and State, this 30th day of October, A. D. 1922.

[SEAL.]

A. S. PAPENGUTH,
Notary Public.

EXHIBIT A.

Charter of Chicago Board of Trade.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. That the persons now composing the Board of Trade of the City of Chicago, are hereby created a body politic and corporate, under the name and style of the "Board of Trade of the City of Chicago," and by that name may sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise or purchase, and dispose of the same by sale, lease, or otherwise (said property so held not to exceed at any time the
37 sum of two hundred thousand dollars); may have a common seal, and alter the same from time to time; and make such Rules, Regulations and By-Laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

Sec. 2. That the Rules, Regulations and By-Laws of the said existing Board of Trade shall be the Rules and By-Laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said Association, known as the "Board of Trade of the City of Chicago," shall be the officers of the corporation hereby created, until their respective offices shall regularly expire or be vacated, or until the election of new officers according to the provisions hereof.

Sec. 3. The officers shall consist of a President, one or more Vice-Presidents, and such other officers as may be determined upon by the Rules, Regulations, or By-Laws of said corporation. All of said officers shall respectively hold their offices for the length of time fixed upon by the Rules and Regulations of said corporation hereby created, and until their successors are elected and qualified.

Sec. 4. The said corporation is hereby authorized to establish such Rules, Regulations and By-Laws for the management of their business, and the mode in which it shall be transacted, as they may think proper.

Sec. 5. The time and manner of holding elections and making appointments of such officers as are not elected, shall be established by the Rules, Regulations and By-Laws of said corporation.

Sec. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the Rules, Regulations and By-Laws thereof.

38 Sec. 7. Said corporation may constitute and appoint Committees of Reference and Arbitration, and Committees of Appeal, who shall be governed by such rules and regulations as may be prescribed in the Rules, Regulations or By-Laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the Association, or by other persons not members thereof; the acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses, and issue subpoenas and attachments, compelling the attendance of witnesses, the same as justices of the peace, and in like manner directed to any constable to execute.

Sec. 8. When any submission shall have been made in writing, and a final award shall have been rendered, and no appeal taken within the time fixed by the Rules or By-Laws, then, on filing such award and submission with the Clerk of the Circuit Court, an execution may issue upon such award as if it were a judgment rendered in the Circuit Court, and such award shall thenceforth have the force and effect of such a judgment, and shall be entered upon the judgment docket of said court.

Sec. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts; and the President or Secretary is hereby authorized to administer such oaths of office as may be prescribed in the By-Laws or Rules of said corporation. Said bonds shall be made payable and conditioned as prescribed by the Rules or By-Laws of said corporation, and may be sued and the moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

39 Sec. 10. Said corporation shall have power to appoint one or more persons, as they may see fit, to examine, measure,

weigh, gauge, or inspect flour, grain, provisions, liquor, lumber, or any other articles of produce or traffic commonly dealt in by the members of said corporation; and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such article, shall be evidence between buyer and seller of the quantity, grade or quality of the same, and shall be binding upon the members of said corporation, or others interested, and requiring or assenting to the employment of such weighers, measurers, gaugers, or inspectors: nothing herein contained, however, shall compel the employment, by any one, of any such appointee.

Sec. 11. Said corporation may inflict fines upon any of its members, and collect the same, for breach of its Rules, Regulations, or By-Laws; but no fine shall exceed five dollars. Such fines may be collected by action of debt, before a justice of the peace, in the name of the corporation.

Sec. 12. Said corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill.

WM. R. MORRISON,

Speaker of the House of Representatives.

JOHN WOOD,

Speaker of the Senate.

Approved February 18, 1859:

WM. H. BISSELL.

40

EXHIBIT B.

Containing Certain Rules of the Board of Trade.

Rule IV.

Sec. 9. When any member shall be guilty of improper conduct of a personal character in any of the rooms of the Association, or shall violate any of the rules, regulations or by-laws of the Association or shall be guilty of any dishonorable conduct, for which a specific penalty has not been provided, he shall be suspended by the Board of Directors from all the privileges of membership for such period as in their discretion the gravity of the offense committed may warrant. When any member shall be guilty of making or reporting any false or fictitious purchase or sale, or where any member shall be guilty of an act of bad faith, or any attempt at extortion or of any dishonest conduct, he shall be expelled by the Board of Directors. Or when a member shall, either in the Exchange building or elsewhere, contract to give to himself or another the option to sell or buy any of the articles dealt in on this Exchange in violation of any criminal statute of this State, he shall forfeit the right to have said contract enforced under the rules of this Association.

Any member suspended from the privileges of the Association shall not be allowed to trade or do any business upon the floor of the Exchange in his own name, either through a broker or employee. * * *

Sec. 16. All charges made to the Board of Directors against any member of the Association for any default, misconduct, or offense, shall be in writing, and in duplicate, and shall state the default, misconduct or offense charged; and the same shall be signed
41 by one or more members of the Association, by a business firm, one or more of whose members shall be a member of the Association, or by the Chairman of a committee of the Association.

Rule X.

Membership and Assessments.

Section 1. All applications for membership in the Association shall be referred to the Committee on Membership, who shall hold regular stated meetings for examining such applicants and their sponsors, in person, under such rules and regulations as may be made by the Board of Directors. Any male person of good character and credit, and of legal age, on presenting a written application, indorsed by two members, and stating the name and business avocation of the applicant, after ten days' notice of such application shall have been posted on the bulletin of the Exchange, may be admitted to membership upon approval by at least ten (10) affirmative ballot votes of the Board of Directors; provided, that three negative ballot votes are not cast against such applicant, and upon payment of an initiation fee of twenty-five thousand dollars, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-Laws of the Association, and all amendments that may be made thereto.

Sec. 2. Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by members of this Association and said membership is not in any way impaired or forfeited, upon the payment of two hundred and fifty
42 dollars, to any person eligible to membership who may be approved for membership by the Board of Directors, after due notice by posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him.

Rule XXI.

Regular Deliveries.

Section 1. All deliveries upon contracts for grain or flax seed, unless otherwise expressly provided, shall be made by tender of regular warehouse receipts, which receipts shall have been registered by an officer duly appointed for that purpose. All such warehouse receipts shall be made to run five days from date of delivery on regular or customary storage charges, which regular or customary charges shall follow such warehouse receipts and be chargeable upon the property covered by the same, and shall be issued by such houses as have complied with the Rules of the Board of Trade and the Regulations and Requirements of the Board of Directors, and have been declared regular warehouses for the storage of grain or flax seed by said Board of Directors; and it shall be the duty of the Board of Directors, prior to the first day of July in each year, to inspect all warehouses, the proprietors or managers of which shall apply to have their receipts declared regular for delivery on contracts under the Rules of the Board of Trade, and no warehouse shall be declared a regular warehouse unless it is conveniently approachable by vessels of ordinary draft and has customary shipping facilities, and unless the storage rates on all grain or flax seed in such warehouses in bulk and in good condition, shall not be in excess of one and one-quarter ($1\frac{1}{4}$) cents per bushel for the first ten days or part thereof, and one-twentieth (1-20th) of one cent per bushel for each additional day thereafter so long as such grain or flax seed remains in good condition, and unless the proprietors or managers of such warehouse are in good financial standing and credit and are carrying on and intend to continue to carry on the legitimate business of public warehousemen under the laws of the State of Illinois and in accordance with the Rules of the Board of Trade of the City of Chicago and the Regulations and Requirements of the Board of Directors and until the proprietors or managers of such warehouse shall file a bond with sufficient sureties in such sum and subject to such conditions as may be deemed necessary by the Board of Directors, under the Rules of the Board of Trade and the Regulations and Requirements of the Board of Directors in reference to warehouses. * * *

Warehouse receipts issued by warehouses so declared regular by the Board of Directors shall be regular for delivery on contracts under the Rules of the Board of Trade so long as the said warehouse shall continue to be a regular warehouse, but the term for which any warehouse is declared a regular warehouse to issue such receipts shall be limited to and expire on the first day of July in each year. No receipts issued on grain received in any warehouse shall be regular for delivery under the Rules of the Board of Trade after that date unless the warehouse upon which it has been issued has again been declared a regular warehouse by the Board of Directors; provided, however, that receipts issued before the first day of July by ware-

houses which have been regular warehouses during the preceding year, but which have not been declared regular for the succeeding year, shall be regular for delivery upon such contracts for six months after the first day of July; but nothing contained herein shall prevent the Board of Directors from declaring any warehouse, or the receipts thereof, irregular at any time for violation or non-compliance with the laws of the State of Illinois or any of the Rules of the Board of Trade or of the Regulations and Requirements of the Board of Directors.

Provided, that the Board of Directors shall have power, when in their judgment an emergency exists requiring more storage room than can be supplied by the regular elevator warehouses, or because of an inability to obtain insurance on grain stored therein, to declare any storehouses, vessels, or places suitable for the storage of grain or flax seed within the Chicago Switching District—wherein the cost of delivery to vessels or railroad cars shall not be greater than such as is made by the regular elevators for the same service—to be regular places for the storage of grain deliverable under the Rules of the Board of Trade.

And provided further, that in case it shall happen that at any time there shall be no warehouses which shall be regular warehouses for the storage of grain and flax seed, then the Board of Directors may declare any warehouses suitable for the storage of grain or flax seed, whose aggregate capacity shall not exceed twenty-five million (25,000,000) bushels, regular warehouses for the storage of grain or flax seed, upon such terms and for such period as the Board of Directors in its discretion may deem necessary or proper, and the warehouse receipts issued by warehouses so declared regular under this proviso, shall be regular for delivery on contracts under the Rules of the Board of Trade, in the same manner as if issued by warehouses declared regular under the foregoing provisions of this section in regard to declaring warehouses regular for the term ending on the first day of July in each year. * * *

45 On and after January 1, 1915, grain in cars, including that graded "subject to approval," shall be deemed a valid tender on contracts during the last three business days of any month, under the provisions of the rules pertaining to the delivery of warehouse receipts—the railroad receipt issued against same evidencing ownership serving to convey the title to the grain, same as warehouse receipts issued against grain in warehouses—when conforming to the following requirements:

A. When within the Chicago Switching District; or, if arriving from outside of the same, when it has reached the railroad yards, where samples are taken by the Illinois State Grain Inspection Department, and when billed to an elevator the receipts of which are regular on delivery; provided nevertheless, that grain so delivered shall be unloaded into the elevator to which it is billed before the delivery shall be deemed complete, and bills for grain so tendered shall not be due and payable until the elevator receipt covering same shall have been delivered to the buyer. Provided further, that deliveries under this rule may be diverted by the buyer from unload-

ing at a regular warehouse to any other unloading where the same will be weighed by the Weighing Department of this Association, by paying for the property before diversion. * * *

E. At any time when, in the judgment of the Board of Directors, an emergency exists, grain in cars shall be deemed a valid tender on contracts, on any business day of any month, when the grade of such grain tendered is evidenced as being a proper grade under the rules for tender, by a certificate of inspection of the Illinois State Grain Inspection Department showing the inspection to have been made during the preceding seventy-two hours, and when conforming to the other requirements of Paragraphs A, B, C and

46 D of this Section, except that any excess or shortage in weights at time of unloading, if then weighed by the Weighing Department of this Association, shall be settled for at the current market value on day such variation is known to both parties.

Rule XXIII.

Failure to Deliver or Receive on Contracts.

Section 1. In case any property contracted for future delivery is not delivered at maturity of contract, the President shall appoint a committee of three from the membership at large, to be approved by the Board of Directors, which Committee shall determine as nearly as possible the true commercial value of the commodity in question on the day of the maturity of the contract, and the price so established shall be the basis upon which settlement is made.

It shall be the duty of the Committee in determining the true commercial value of the commodity under this Rule, to ascertain its value in other established markets, or for manufacturing or consumptive purposes, in this country, together with such other facts as may justly enter into the determination of its value.

As liquidated damage the seller shall pay to the purchaser not less than one per cent nor more than ten per cent of the value of the commodity as established by the Committee; the percentage, within said limits, to be such as, in the judgment of the Committee, may be just and equitable.

Settlement shall be made without delay, and the damage as determined under the provisions of this Section, shall be immediately due and payable.

This section shall not be construed as applying to any parties having the property both bought and sold, in all of which

47-49 cases settlement shall be made on basis of prices established by the contracts in such instances.

Sec. 2. In case any property contracted for future delivery is not received and paid for when properly tendered, it shall be the duty of the seller, in order to establish any claim on the purchaser, to sell it on the market at any time during the next twenty-four hours, at his discretion, after such default shall have been made, notifying the purchaser within one hour of such sale; and any loss resulting to the seller shall be paid by the party in default. * * *

50 And afterwards on, to wit, the 30th day of October, 1922, this matter coming on to be heard, the following order was entered by the Court:

51 In the District Court of the United States, Northern District of Illinois, Eastern Division.

October 30, 1922.

Present: Honorable George A. Carpenter, District Judge.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Order.

Upon filing the bill of complaint herein, and on motion of complainants' counsel,

It is ordered that defendants show cause before this court, at ten o'clock a. m., on the 13th day of November, 1922, why a temporary injunction should not issue as prayed by said bill.

And it appearing to the court that it will be prejudicial to the public interest, and will cause irreparable injury to the complainants herein, if future trading on the Chicago Board of Trade shall be suspended or disturbed pending the hearing of the foregoing motion, and that the time intervening before said Grain Futures Act becomes operative is too short to permit of notice of, and arguments upon, the application for a temporary restraining order,

It is further ordered That the defendant Charles F. Clyne, as United States District Attorney for the Northern District of
52 Illinois, be enjoined and restrained from attempting to enforce said Grain Futures Act prior to the hearing and decision by this court of said motion, and also from at any time prosecuting criminally or otherwise, under Section 9 of said Grain Futures Act, any member of said The Board of Trade of the City of Chicago, or any customer of any such member, for or by reason of any violation by him or them of said Act prior to the hearing and decision of said motion by this court; and that said Arthur C. Lueder, as Postmaster of the City of Chicago, be also restrained from interfering with any of the mail passing to or from members of the Chicago Board of Trade and customers of said members prior to the hearing and decision by this court of said motion.

Enter.

CARPENTER,

Judge.

30 Oct., 1922.

53 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Answer, in words and figures following to-wit:

54 *Answer.*

In the District Court of the United States, Northern District of Illinois, Eastern Division.

D. C. In Chancery.

Equity. No. 3046.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

55 *Answer.*

The joint and several answer of Charles F. Clyne, United States Attorney for the Northern District of Illinois; Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United States Postmaster at the City of Chicago, defendants, to the bill of complaint.

These defendants, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, come and answer thereto, or to so much thereof as they are advised is material to be answered, and say:

I.

The defendants admit the allegations of paragraph I of complainants' bill, but further answering said paragraph I, the defendants allege that Section 1 of the Act of the State of Illinois creating the Board of Trade of the City of Chicago, hereinafter referred to as the "Exchange," expressly provides that the rules and by-laws made from time to time for the government of said Exchange shall not be "contrary to the laws of the land."

The defendants, further answering complainants' bill, aver that the special charter granted by the State of Illinois to said Exchange, which is incorporated in complainants' bill as Exhibit A, confers upon said Exchange quasi-public and judicial powers, including the power to subpoena witnesses, administer oaths and make awards, which said awards, when filed in court, have the force and effect of a judgment, and also confers upon said Exchange the power to appoint one or more persons to examine, measure, weigh and inspect flour, grain and other articles of produce dealt in by the members of

56 said Exchange, and provides that the certificate of such person or persons as to the quality or quantity of any such article shall be evidence between buyer and seller of the quantity, grade or quality of the same and shall be binding upon the members of said Exchange or others interested. The defendants further aver that the bestowal of these powers upon said Exchange, and the acceptance and the long-continued exercise thereof by said Exchange, operate to impress said Exchange with a public interest and affects it with a public use, and by reason thereof said Exchange is estopped to claim or assert in this suit that it does not conduct a business affected with a public use.

And, further answering said bill, the defendants allege that the Supreme Court of Illinois, in the case of New York & Chicago Grain & Stock Exchange v. Chicago Board of Trade, 127 Ill. 153, decided January 25, 1889, in discussing the question whether the business conducted on said Exchange is affected with a public use, said:

It has been said, and with much show of reason, that the floors of this Exchange hall stand in the gateway of commerce. * * *

Four-fifths of the grain and provisions produced in the States and Territories of the Northwest are bought and sold in this market, and the business there done is so vast in its proportions that it fixes the market prices of grain, breadstuffs and meats for the extensive territory that is tributary to Chicago, and seriously affects and to a considerable extent controls the values of the necessities of life throughout the United States and the civilized world.

(2 L. R. A. 412.)

For many years the board has so used its franchises, and its members have so conducted their business, as that it has become of vast commercial influence and fixes the market values of grain and agricultural products for a large territory, and the fluctuations in prices upon its floors powerfully affect the market prices of the necessities of life throughout the country and the world.

The great power and influence which the Board possesses in dictating market values is owing to the vast aggregation of products which are drawn to its portals for a market and are bought and sold upon its floors, and which pay tribute and toll, in the shape of commissions, to its members. The great bulk of this business, though in form and as between the members the mere private and individual dealings of such members, is in reality the business of the numerous producers, consumers, merchants and shippers for and on behalf of whom these members deal.

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* * * * *

In this way the business of the country in buying and selling agricultural products has been brought under the control of the market values for such products as fixed and determined on the Board of Trade; and the business of dealing in such products has been brought to conform to the method of receiving instantaneous and continuous market reports inaugurated and for years persisted in by the Board of Trade and the telegraph companies.

And the court further said:

Assuming that these market quotations and reports are property, and the private property of the Board of Trade, yet if they have been so used by the board and by the telegraph companies with the knowledge and consent of the board as to become affected with a public interest, then they are subject to such public regulation by the Legislature and the courts as is necessary to prevent injury to such public interest.

The defendants further allege that in said decision the Supreme Court of Illinois decided that the quotations of grain prices emanating from said Exchange are affected with a public interest and that said decision is conclusive on the complainants as to the public character of said quotations.

And defendants, furthering answering said bill, allege that all the business conducted upon the said Exchange is affected with a national public interest.

II.

The defendants admit the allegations contained in paragraph II of complainants' bill.

III.

The defendants admit the allegations contained in paragraph III of complainants' bill, except that defendants are without knowledge as to whether said Exchange has ever admitted to membership any corporation, but the defendants aver that the rules, regulations and by-laws of said Exchange may be repealed or altered at any time.

58

IV.

The defendants admit the allegations contained in paragraph IV of complainants' bill.

V.

The defendants admit the allegations contained in paragraph V of complainants' bill and, further answering the said paragraph, the defendants allege:

(a) That members of said Exchange receive from members and non-members outside of the State of Illinois by telegraph, telephone, cable and other instrumentalities and agencies of interstate and foreign commerce, and accept and execute for them, offers or orders to buy and sell "cash" grain and contracts for grain for future delivery, and

(b) That the said Exchange does acquire valuable commercial and economic information affecting prices of grain which it disseminates or causes to be disseminated through the instrumentalities

and agencies of interstate and foreign commerce. That the said Exchange is the largest and most important market in the world for trading in grain for future delivery, and that the prices of transactions entered into thereon form the basis for and dominate the prices of cash grain and transactions for future delivery in interstate and foreign commerce throughout the world, and that the quotations as published by said Exchange are of immense value to the grain trade and to the public in general in determining the prices of grain in interstate and foreign commerce.

VI.

The defendants admit subdivision F of Rule XIV as set out in paragraph VI of the complainants' bill, but as to the other allegations contained in said paragraph, defendants say they have
59 no knowledge or belief sufficient either to admit or deny the same, and therefore demand strict proof of the same, and aver on information and belief that whatever increase in value may have accrued to memberships in said Exchange is not due solely to any restrictions upon the number of members or to the expulsion of members.

VII.

The defendants admit the allegations contained in paragraph VII of complainants' bill with these exceptions:

(a) The defendants deny that the refunds of cooperative associations, which are popularly called patronage dividends, are rebates.

(b) The defendants are without knowledge as to the allegations therein contained with reference to the organization, methods and purposes of the United States Grain Growers, Incorporated, of Delaware, and demand strict proof thereof.

(c) The defendants, further answering said paragraph, admit that said cooperative associations have sought, without formal application, to become members of said Exchange and that said Exchange has refused them admission therein. The defendants allege that they are without knowledge as to the reason for such refusal and demand strict proof thereof.

(d) The defendants, further answering said paragraph, deny that the admission of such members or representatives would break down the commission rule of said Exchange and ultimately destroy the business of such members of said Exchange as consists in the receiving of grain by consignment for sale on commission. The defendants deny that the ultimate effect of such admission would be to much impair, if not destroy, the value of the memberships of said Exchange and make it difficult for said Exchange to maintain sufficient members who would be willing to pay assessments to
60 meet the expenses of maintaining said Exchange.

VIII.

The defendants deny the allegation contained in paragraph VIII of the complainants' bill that the members of said Exchange engage only in the different kinds of trading in grain set out in said paragraph VIII.

The defendants admit the allegations contained in subdivision (1) of paragraph VIII of the complainants' bill. Further answering said subdivision (1), defendants allege that the bulk of the cash grain which is bought and sold on and through said Exchange in Chicago is shipped into Chicago from many states other than Illinois, and that, after sale, the bulk of said grain is shipped out of the State of Illinois into other States and foreign countries.

The defendants admit the allegations contained in subdivision (2) of said paragraph VIII.

Further answering said subdivision (2), the defendants allege that the bulk of said offers to buy cash grain for deferred shipment are sent by mail and by telegraph, telephone and other instrumentalities and agencies of interstate and foreign commerce by members of said Exchange to country grain dealers and others at points outside the State of Illinois; and that the bulk of said offers to sell cash grain for deferred shipment are sent in interstate and foreign commerce by members of said Exchange to millers and other grain buyers at points outside the State of Illinois, in other States and foreign countries, and that the acceptance and fulfillment of such offers oblige the shipment of grain in interstate and foreign commerce.

The defendants deny the allegation contained in subdivision (3) of said paragraph VIII that both buyers and sellers in all
61 said contracts for future delivery are personally present in the City of Chicago when the contracts are made. The defendants admit all the other allegations contained in said subdivision (3).

Further answering said subdivision (3), the defendants allege that the bulk of the contracts for future delivery of grain which are executed by the members upon said Exchange and referred to in said subdivisions (3) originate outside of the State of Illinois and are made for persons who are not present in Chicago or the State of Illinois at the time of the execution or settlement of said contracts in the City of Chicago; that the orders for the making of the bulk of said contracts are communicated to the members of said Exchange by persons outside of the State of Illinois, through the instrumentalities and agencies of intrastate and foreign commerce, and that the principals in the bulk of said contracts are neither present nor residing in the state of Illinois.

Further answering said paragraph 8, the defendants deny that the use of said Exchange for the making of contracts for speculative purposes is a minor incidental part of the general use of said Exchange for trading in grain.

IX.

The defendants admit that Rule XXI set out in Exhibit B, which is made a part of the complainants' bill and referred to in paragraph IX thereof, is a rule of said Exchange; that said rule provides for the delivery of warehouse receipts instead of the grain, and only of such warehouse receipts as the rules of said Exchange make valid for delivery; that only such warehouse receipts are deliverable upon contracts for future delivery as shall be issued by warehouses which have

62 complied with the rules, regulations and requirements of said Exchange and have been, by the Board of Directors of said Exchange, declared regular warehouses for the storage of grain. The defendants aver that such warehouse receipts are merely a means of making delivery of the actual grain. The defendants admit that none of the warehouses thus made regular is located outside of the State of Illinois; that said rules make it the duty of said Board of Directors, on the first day of July each year, to designate the grain elevators or warehouses in Illinois whose receipts shall be deliverable between its members on their contracts for future delivery for the ensuing year; that said rule provides that the Board of Directors may declare as regular elevators only such elevators or warehouses as have been licensed by the State of Illinois to conduct a public warehouse; that the law of Illinois provides that it shall be the duty of every warehouseman of Class A to receive for storage any grain tendered him and to mix such grain with other grain of a similar grade received at the same time as near as may be; that said law provides that the warehouse receipt issued for such grain so received in said warehouse shall state on its face that the grain mentioned therein has been received into store to be stored with other grain of the same grade received about the same time, and that said law provides that when any holder of any such warehouse receipt shall demand the delivery of the grain therein mentioned, said warehouseman shall deliver on said receipt such of the grain of that particular grade as was first received by him in store or had been the longest time in store in his warehouse.

The defendants admit that said Exchange has never declared a regular elevator, under said rule, any warehouse which has not been licensed under the laws of Illinois to conduct a warehouse of Class A.

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X.

The defendants admit the allegations contained in paragraph X of complainants' bill.

XI.

The defendants admit the allegations contained in paragraph XI of complainants' bill with the exception that they deny that portion of said paragraph which alleges that the Board of Directors of said Exchange have not exercised the emergency powers conferred upon them with reference to delivery of grain in cars on track during any business day of the month of delivery.

XII.

The defendants admit the allegations contained in paragraph XII of complainants' bill.

XIII.

The defendants admit the allegations contained in paragraph XIII of complainants' bill.

XIV.

The defendants admit the allegation contained in paragraph XIV of complainants' bill that approximately six-sevenths of all the trading in grains for future delivery upon the Exchanges of the United States take place in the Exchange hall of said Exchange and that other commercial exchanges which furnish to their members and customers like facilities for making contracts for future delivery are located and maintained at Minneapolis, Duluth, Kansas City, St. Louis, and Toledo, Ohio. The defendants are without knowledge as to whether the members of the other exchanges mentioned in said paragraph XIV are competing with the members of said Chicago Exchange for the business of making contracts for future delivery for customers and demand 64 strict proof thereof. The defendants admit that there is such competition with respect to the purchase of cash grain at country points; that many of the members of the Chicago Exchange are also members of some or all of said other exchanges; that they trade through the instrumentalities and agencies of interstate commerce in said other exchanges for future delivery of grain when price conditions there, as compared with price conditions on the Chicago Exchange, make it profitable for them to do so, and that the present supply of available grain and the present and future requirements of the millers and consumers, not only in this country but in different countries of Europe, constitute some of the elements, but they deny that they constitute all of the elements, which determine from time to time the prices at which said future trading on said Exchange is transacted.

The defendants, further answering said paragraph XIV, deny all the other allegations therein contained and specifically deny that the rise and fall of prices in such future trading only express the normal operation of the natural law of supply and demand.

XV.

The defendants admit the allegation contained in paragraph XV of complainants' bill that there have been corners in grain on said Exchange. The defendants deny that said Exchange has for many years maintained and enforced rules to prevent the running of such corners. The defendants further deny that by reason of such rules and their enforcement—and perhaps the Sherman Anti-Trust Law—no corners have for the last fifteen years occurred

in future trading in grain on said Exchange or other boards of trade and that no member of said Exchange or of any of said other boards of trade has ever been indicted or convicted under
 65 any of the statutes, State or Federal, which prohibit the running of corners. The defendants further deny that such future trading on said Exchange or any other board of trade has never been successfully resorted to by any one for the purpose of manipulating or controlling, and thereby depressing, the prices of grain. The defendants further deny that a sale for future delivery on said Exchange does not result in, nor have the effect of, causing the price of grain to be abnormally depressed or to be other than such as results from the unrestricted operation of the natural law of supply and demand.

The defendants, further answering said paragraph XV, aver that said Rule XXI and other rules of said Exchange with respect to the delivery of grain or warehouse receipts in fulfillment of future contracts constantly encourage and create fluctuations in grain prices and induce and facilitate manipulation of, and corners and attempts to corner, the grain market, in that said Rule XXI excludes from delivery on said contracts any grain which is not in storage in designated warehouses, the combined capacity of which is only 12,950,000 bushels and is wholly inadequate because of the gross disproportion between such capacity and the grain involved in such future contracts, which amounts annually to about 15,000,000,000 bushels. The defendants further aver that complainants' rules extending the facilities for such delivery in prescribed emergencies do not remedy the situation, but invite further manipulation and discrimination with respect to the application and operation of said rules, and that said emergency rules show the inadequacy of the delivery facilities provided by said Exchange.

The defendants further aver that the existence of these rules operates as a threatening and depressing factor upon prices, in that, at the time contracts are entered into it is not known whether
 66 or when the emergency rules will be invoked and when invoked the buyer must either wait until the seller finds adequate space in one of the regular warehouses and makes delivery of warehouse receipts in accordance with his contract, or the buyer must accept delivery of the cars of grain on the railroad track with demurrage and the responsibility for warehousing the grain himself, and must run the risk of inability to fulfill other contracts that he may have executed for the delivery of such grain in interstate or foreign commerce.

XVI.

The defendants deny each and all of the allegations contained in paragraph XVI of complainants' bill. The defendants, further answering paragraph XVI of complainants' bill, aver that the prices involved in contracts for the purchase and sale of grain for future delivery are generally quoted and disseminated by mail and by telegraph, telephone, cable and other instrumentalities and agencies of interstate and foreign commerce throughout the United States

and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products thereof and to facilitate the movement thereof in interstate and foreign commerce; that such contracts for the purchase and sale of grain for future delivery are utilized by shippers, dealers, millers and others engaged in handling grain and the products thereof in interstate and foreign commerce as a means of hedging themselves against possible loss through fluctuations in price; that the contracts for the purchase and sale of grain for future delivery, and prices of grain on said Exchange and other boards of trade in the United States, are susceptible to speculation, manipulation and control, and that such prices and contracts in future trading on said Exchange and other boards of trade, have been from time to time, and are, manipulated and controlled; that sudden and unreasonable fluctuations in the prices thereof have occurred and do occur frequently as a result of such speculation, manipulation and control; that such fluctuations are detrimental to producers and consumers and persons handling grain and the products thereof in interstate and foreign commerce; and that such fluctuations in prices have been and are an obstruction to, and a burden upon interstate and foreign commerce in grain and the products thereof.

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XVII.

The defendants admit all the allegations contained in paragraph XVII of complainants' bill except that they deny

(a) that the Supreme Court of the United States, on the fifteenth day of May, 1922, adjudged that such future trading was intrastate and not interstate commerce and that the provisions of said The Future Trading Act were unconstitutional and void because not within the power of Congress to regulate interstate commerce, and (b) they deny that the defendants herein are, by reason of such decree and the facts in said bill stated, estopped to claim or assert in this suit that said future trading is interstate and not intrastate commerce, or that Congress had, under the power conferred upon it to regulate interstate and foreign commerce, power to enact any of Sections 4, 5, 6, 7, 8, and 9 of said The Grain Futures Act.

The defendants, further answering said paragraph XVII, allege that the complainants have misconstrued the decree of said Supreme Court, as shown by the opinion, which is by reference made a part of this paragraph of defendants' answer.

XVIII.

The defendants deny all the allegations contained in paragraph XVIII of complainants' bill except that defendants admit that prior to the passage of said The Future Trading Act and said The Grain Futures Act the Committees on Agriculture in Congress did conduct hearings and did offer such interested parties as desired to be heard, an opportunity to appear and to testify and to be heard for and

against the passage of said bills, and that such persons who appeared as witnesses were not sworn. And, further answering said paragraph XVIII, the defendants allege that officers, directors and other representatives of said Exchange and other boards of trade did attend and introduce both oral and documentary evidence at such hearings and that the testimony and statements taken at said hearings did show that the transactions and prices of grain in future trading on the Chicago Exchange and other boards of trade have been and are susceptible to speculation, manipulation and control; that sudden and unreasonable fluctuations in prices of grain have and frequently do occur as a result of such speculation, manipulation and control, which are detrimental to the producers and consumers and persons handling the grain and products thereof, and further, that the evidence and statements submitted at said hearings showed that such fluctuations in said prices as do and have occurred are and have been an obstruction to and a burden upon interstate commerce in grain and the products thereof.

The defendants further aver that The Grain Futures Act is not the result solely of the hearings and proceedings in Congress alleged in complainants' bill, but is, in fact, the culmination of more than thirty years of consideration and investigation by Congress and Federal agencies of the business of trading in grain and other commodities for future delivery and the effects thereof upon interstate and foreign commerce.

XIX.

The defendants deny each and all the allegations contained in paragraph XIX and every subdivision thereof of complainants' bill.

XX.

The defendants admit that the Secretary of Agriculture has announced that he will not designate any exchange as a "contract market" under said The Grain Futures Act and will not permit any exchange to continue as a contract market thereunder unless such exchange shall adopt, maintain and enforce against its members the rule set out in paragraph XX of complainants' bill. Defendants admit that the Secretary of Agriculture has announced that he will enforce, as far as is incumbent upon him to do so, all the provisions of said The Grain Futures Act.

70 The defendants aver that the question concerning admission to membership of co-operative associations of producers under clause (e) of section V of said Act will not arise until an exchange refuses to comply therewith or until an association of producers coming within the provisions of said clause makes application and is denied the privileges sought thereunder.

The defendants admit the allegation that the defendant, Charles F. Clyne, as such District Attorney, will enforce all the provisions of said The Grain Futures Act so far as it is incumbent upon him to do so. The defendants, further answering said paragraph XX, deny

that the enforcement of said The Grain Futures Act will cause serious disturbance of the grain markets of the country and that many growers of grain will be deprived of the privilege of insuring themselves against price fluctuations through "hedging" contracts on such Exchange. The defendants further deny that thereby irreparable loss will be caused to complainants or the members of said Exchange.

The defendants further aver that The Future Trading Act of August 24, 1921, set forth conditions governing designation of exchanges as "contract markets" substantially similar to the conditions set forth in Section V of The Grain Futures Act; that under said The Future Trading Act all of the exchanges in the United States on which the defendants are informed and believe trading in grain futures is conducted, including those mentioned in paragraph 14 of complainants' bill; to wit, Minneapolis, Duluth, Kansas City, St. Louis, and Toledo, Ohio, applied for and received from the Secretary of Agriculture designations as "contract markets," including the Chicago Board of Trade except that the designation in the case of the Chicago Board of Trade was partially limited by a restraining order issued by the Supreme Court of the United States during the pendency of the litigation to test the constitutionality of said Act referred to in complainants' bill.

71 The defendants further aver that under the Grain Futures Act of September 21, 1922, four of the same exchanges that received designations as "contract markets" under The Future Trading Act of August 24, 1921; to wit, exchanges located at Los Angeles, San Francisco, and Milwaukee, and the Open Board of Trade of Chicago, again applied for and received designations as "contract markets" and that no application for designation has been made by any other exchange or denied by the Secretary of Agriculture.

The defendants aver that compliance by the exchanges with the requirements of The Grain Futures Act, all of which are reasonable, will restore confidence to producers and others interested in the grain trade and the public generally and will stabilize the grain industry and encourage the use of the grain exchanges for the accomplishment of their economic purposes.

XXI.

The defendants admit the allegation as to the amount in controversy contained in paragraph XXI of complainants' bill.

XXII.

The defendants further answering complainants' bill, deny that the complainants have set forth facts sufficient to entitle them to either a temporary or permanent injunction, as prayed for in said bill.

that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in, or have the effect of causing, the prices of grain to be abnormally depressed, nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

JAMES E. BOYLE.

Subscribed and sworn to before me, this 27th day of October, 1922.

[SEAL.]

JOHN G. GUDMUNDSEN,
Notary Public.

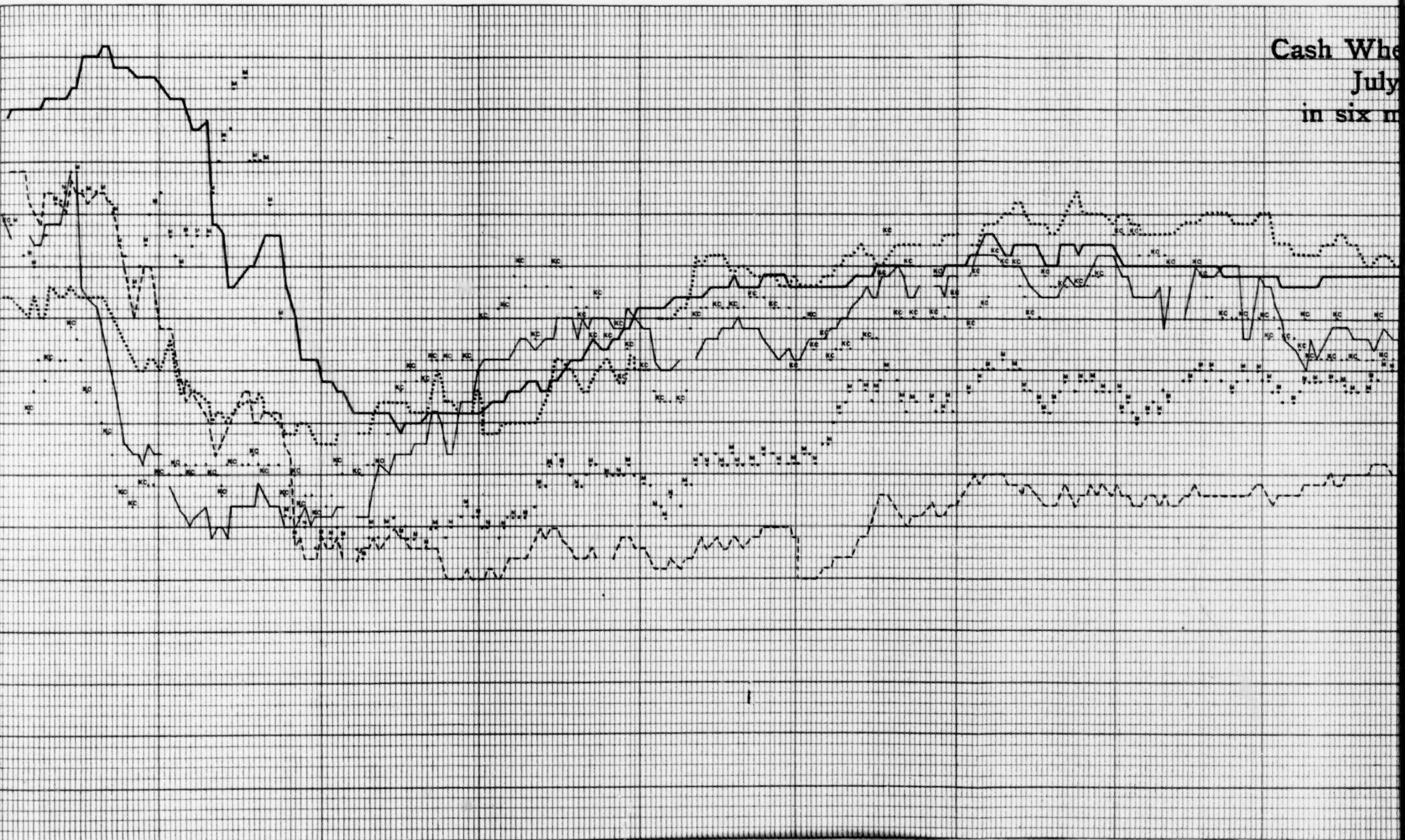
77 EXHIBIT A TO THE AFFIDAVIT OF JAMES E. BOYLE,

Being a Chart of Wheat Prices Daily for Five Years from July 1, 1909, to June 30, 1914, in Chicago, Liverpool, New York, Winnipeg, Minneapolis and Kansas City.

(Here follows said exhibit.)

\$1.50
\$1.45
\$1.40
\$1.35
\$1.30
\$1.25
\$1.20
\$1.15
\$1.10
\$1.05
\$1.00
.95
.90
.85
.80
.75
.70

Cash Wheat
July
in six months

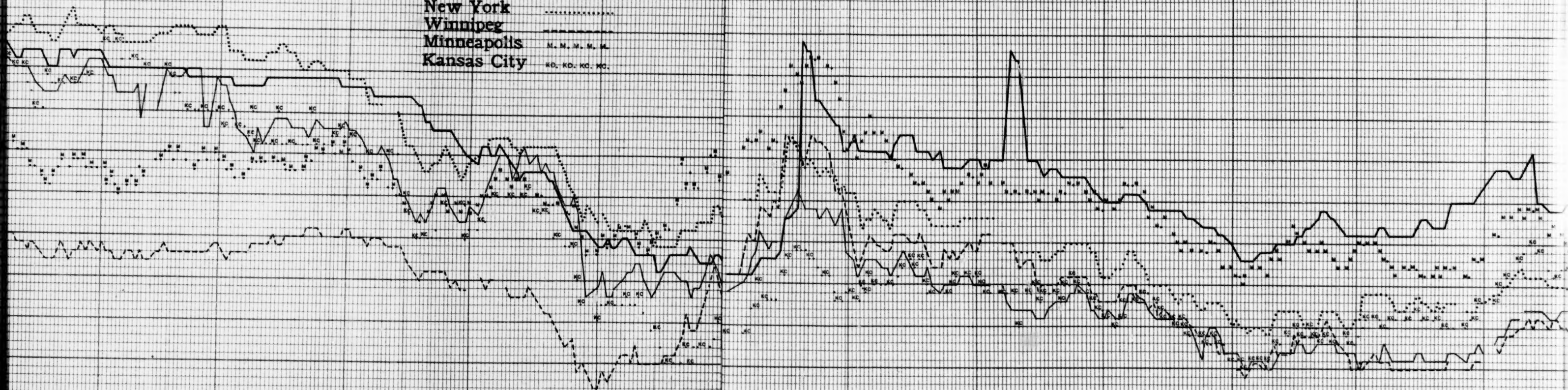


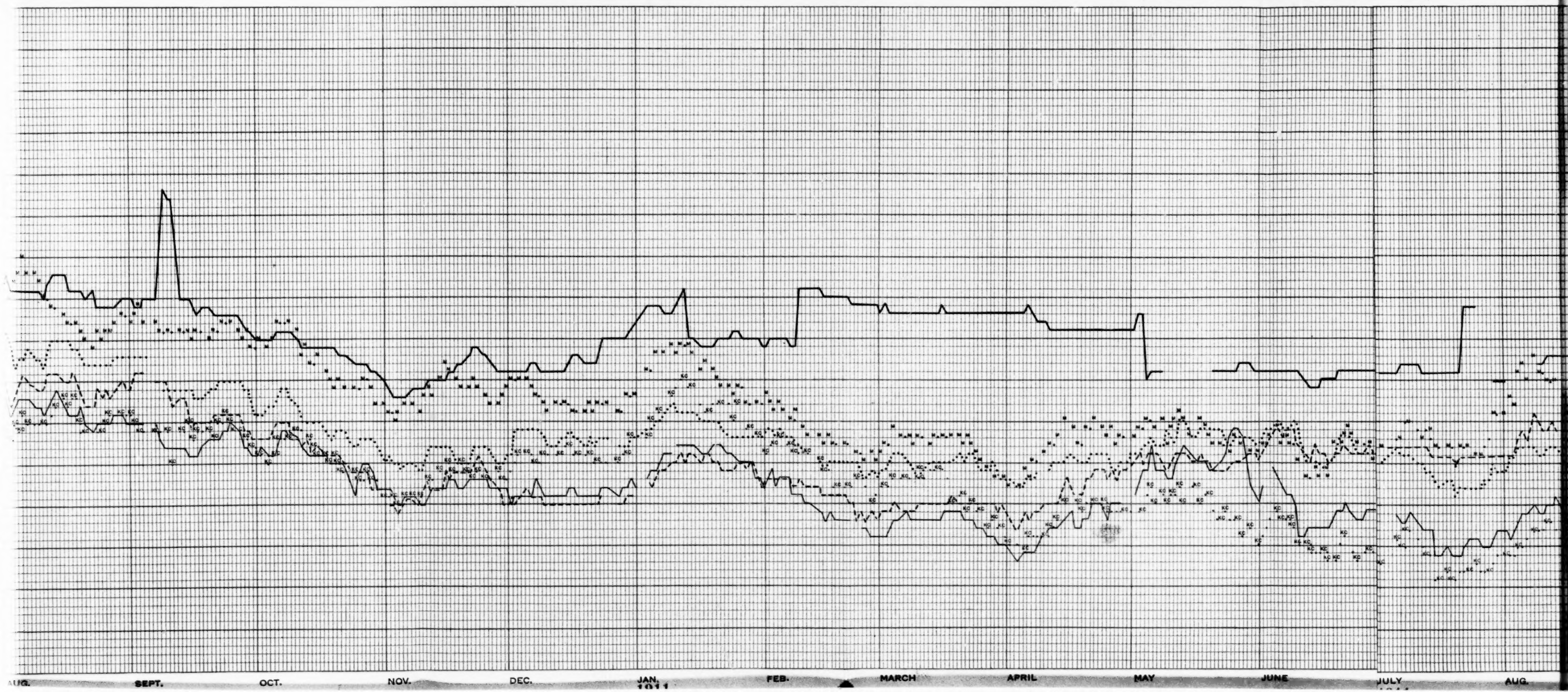
Cash Wheat Prices Daily, for five years,
 July 1, 1909 — June 30, 1914,
 in six markets:—

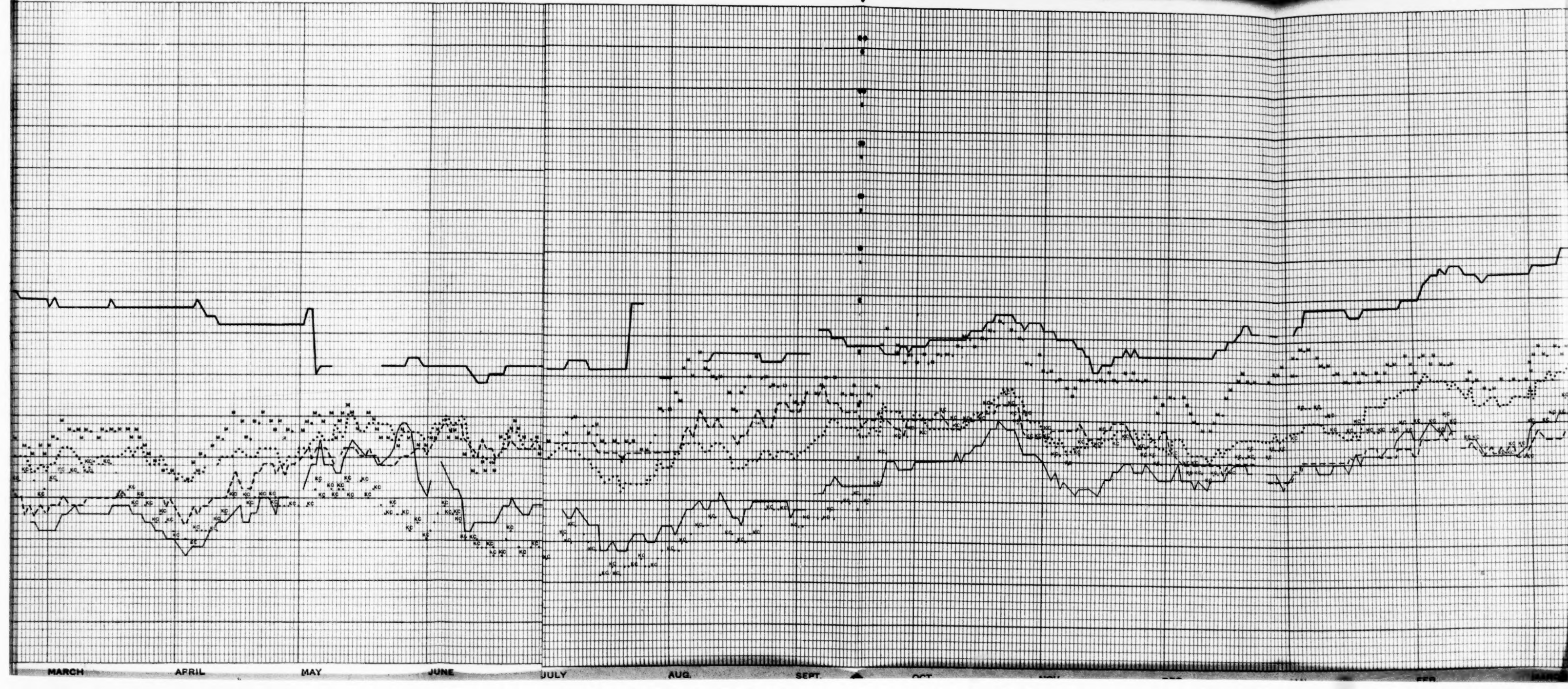
Chicago
 Liverpool
 New York
 Winnipeg
 Minneapolis
 Kansas City

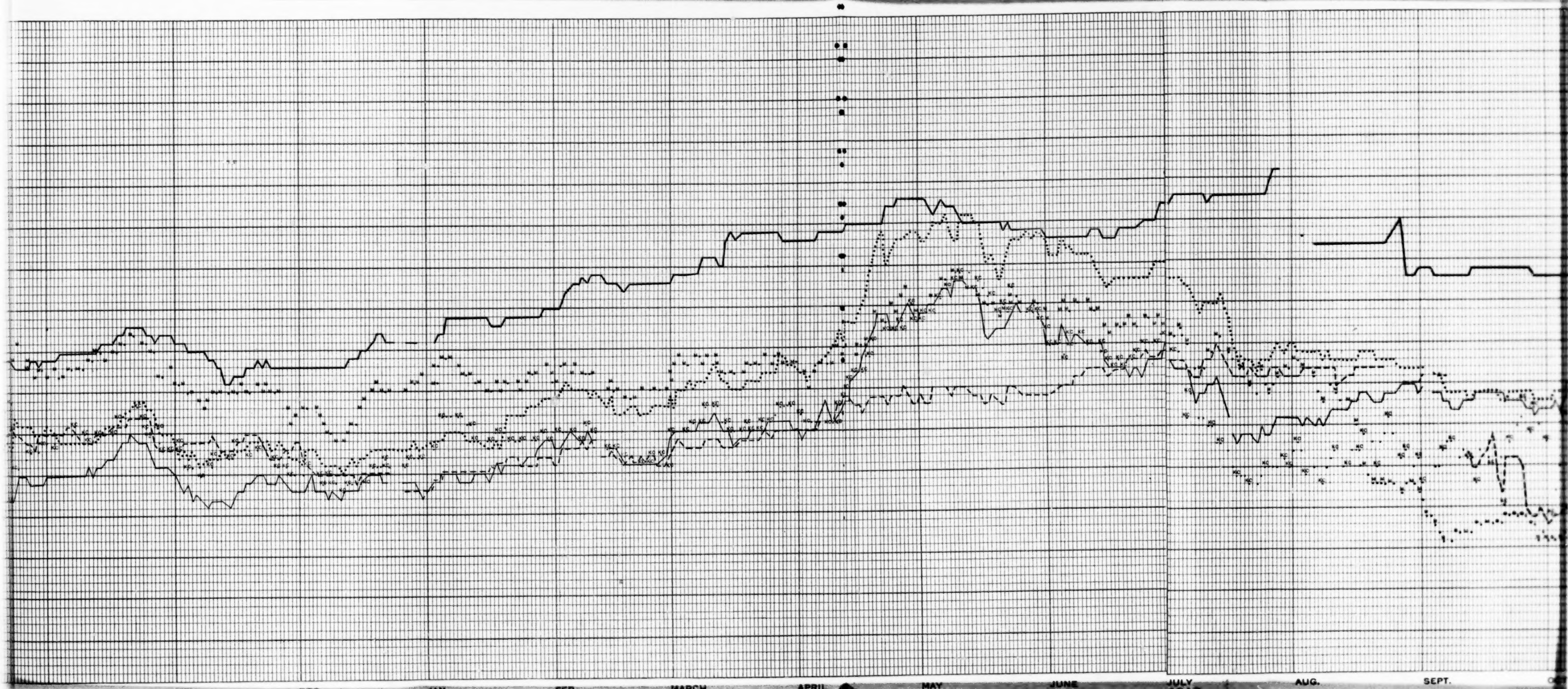
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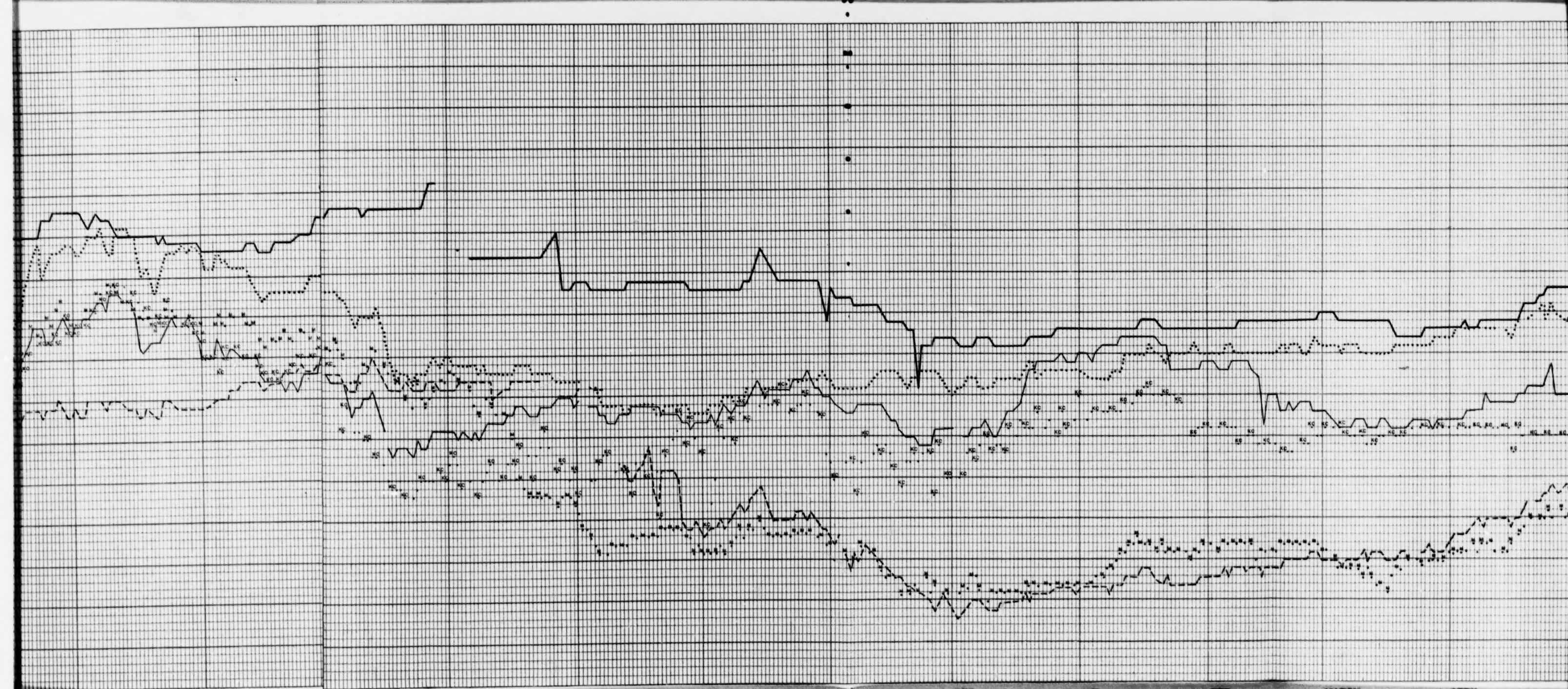
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 M. M. M. M. M.
 KD. KD. KC. KC.

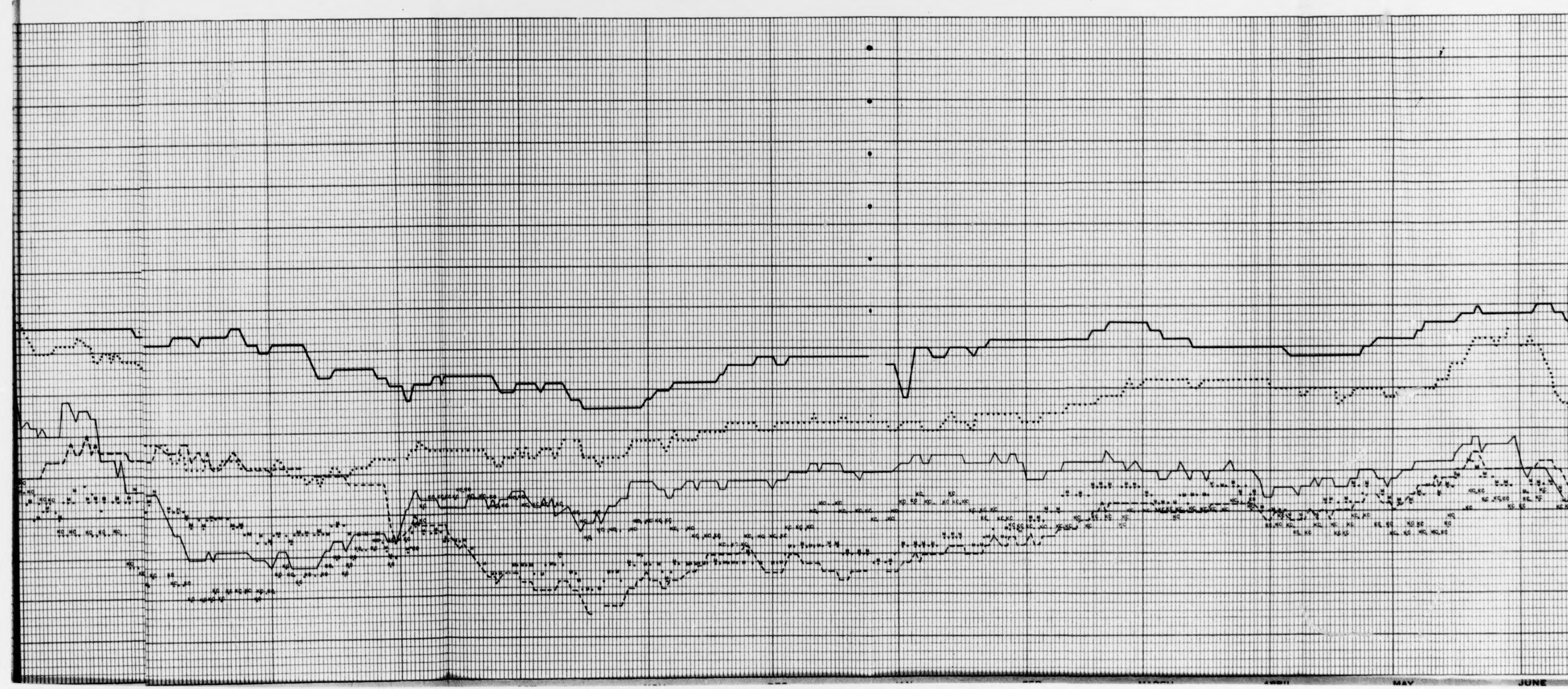


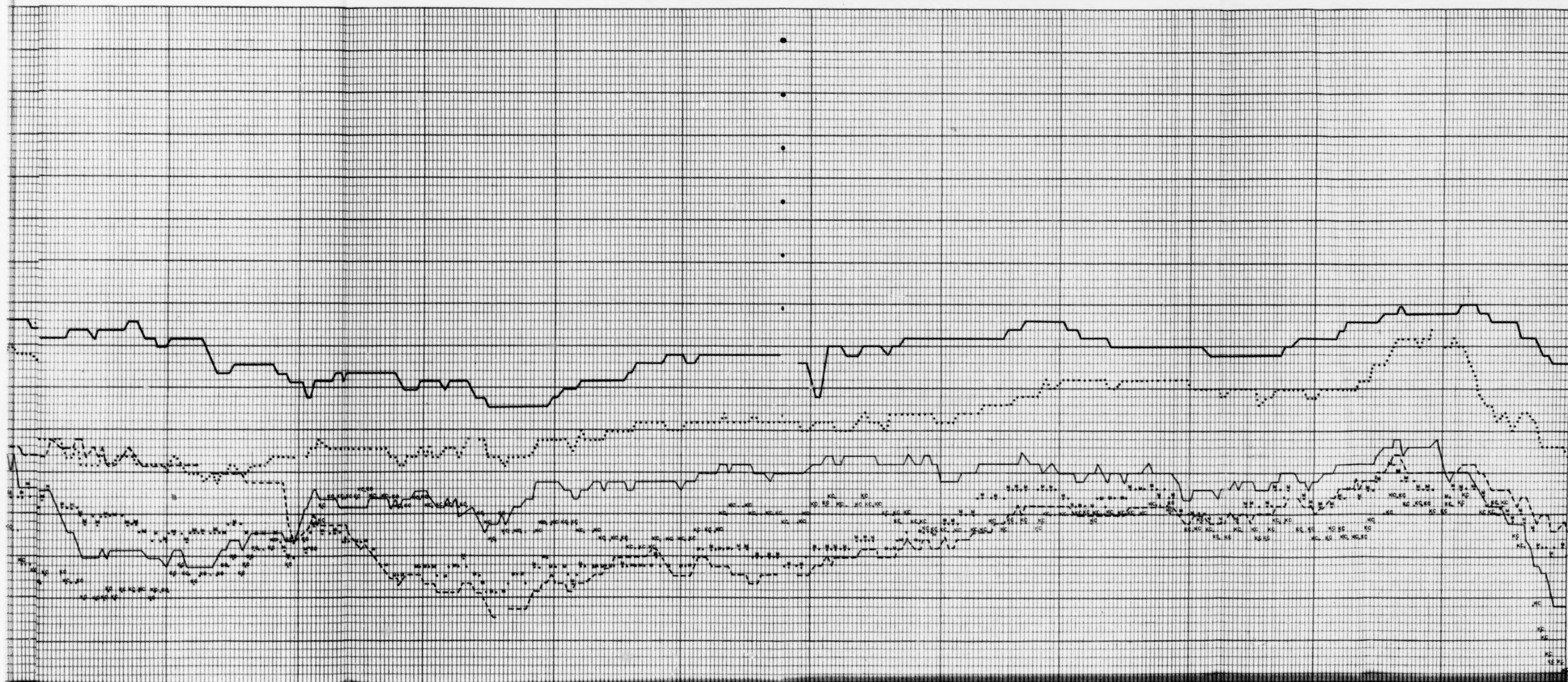












78 EXHIBIT B TO THE AFFIDAVIT OF JAMES E. BOYLE.

Explanatory of Wheat Price Chart, Exhibit A.

Average Annual Freight Rates and Other Charges on Wheat Exported from Chicago to Liverpool via New York July 1, 1909-June 30, 1914.

Miscellaneous Charges July 1, 1909-June 30, 1914.

Chicago elevation, lake, and rail.	Lake marine insurance.	Chicago weighing and inspection.	Shrinkage on rail shipment.	New York charges.
½c. per bu.	30c. per \$100, Ap. 15-Aug. 31. 45c. per \$100, Sep. 1-Nov. 30.	½c. per bu.	⅛ c. per bu.	New York fobbing, 5/8c. per bu. New York elevation, ⅛c. per bu. Trimming the load, \$1.50 per 1,000 bu. New York inspection, 25c. to 40c. per 1,000 bu. Total average of N. Y. Charges, 9/10c. per bu.

Freight Rates, Chicago to New York, 1909-1914.

	Lake and canal.	Lake and rail.	All rail
1909	5.35c. per bu.	6.88c. per bu.	11.70c. per bu.
1910	5.10	6.54	9.60
1911	5.37	5.23	9.60
1912	5.57	6.42	9.60
1913	5.70	6.81	9.60
1914	5.31	6.54	9.60

Marine Insurance, New York to Liverpool, 1909-1914, 25¢ to 30¢ per \$100.

Ocean Freight Rates, New York to Liverpool, 1909-1914, Cents per Bu.

	Low.	High.	Average.
July 1-Dec. 31, 1909	3	5	3¼
Jan. 1-Dec. 31, 1910	2	4½	3
Jan. 1-Dec. 31, 1911	2½	7	4
Jan. 1-Dec. 31, 1912	4	11	7¾
Jan. 1-Dec. 31, 1913	3½	9	5¾
Jan. 1-June 30, 1914	2½	4	3

79 *Average Annual Freight Rates and Other Charges on Wheat Shipped from Winnipeg to Liverpool July 1, 1909-June 30, 1914.*

Freight rates:

Winnipeg to Fort William, Ontario, 1909-1914, 6 cents per bu.
 Fort William to Montreal, 1909-1911, 15 cents per bu.
 1912-1914, 13.8 cents per bu.

Montreal charges:

Fobbing, 9/10 cents per bu., of which shipper pays $\frac{1}{2}$ cent.
 Wharfage, 3 cents per 2,000 pounds.

Average total of Montreal charges..... $\frac{5}{8}$ cents.

Ocean Rates, Montreal to Liverpool, Cents per Bu.

Season.	Low.	High.	Average.
July-Nov., 1909.....	2 $\frac{1}{4}$	6	4
May-Nov., 1910.....	1 $\frac{7}{8}$	5 $\frac{1}{4}$	3 $\frac{1}{2}$
May-Nov., 1911.....	3 $\frac{3}{4}$	7 $\frac{1}{4}$	4 $\frac{5}{8}$
May-Nov., 1912.....	4 $\frac{1}{2}$	12 $\frac{3}{4}$	7 $\frac{3}{8}$
May-Nov., 1913.....	6	9	7 $\frac{5}{8}$
May-June, 1914.....	3 $\frac{3}{4}$	6	4 $\frac{7}{8}$

Marine Insurance, Montreal to Liverpool, Summer Seasons, Cents per \$100.

1909. Opening to Oct. 15.. 27 $\frac{1}{2}$	1912. Opening to Oct. 15.. 20
Oct. 16-31..... 32 $\frac{1}{2}$	Oct. 16-31..... 25
Nov. 1-15..... 37 $\frac{1}{2}$	Nov. 1-15..... 30
Nov. 15 to close.... 40	Nov. 15 to close.... 32 $\frac{1}{2}$
1910. Opening to Oct. 15.. 27	1913. Opening to Oct. 15.. 20
Oct. 16-31..... 32	Oct. 16-31..... 25
Nov. 1-15..... 37	Nov. 1-15..... 30
Nov. 15 to close.... 39 $\frac{1}{2}$	Nov. 15 to close.... 32 $\frac{1}{2}$
1911. Opening to Oct. 15.. 25	1914. Opening to Oct. 15.. 20
Oct. 16-31..... 30	Oct. 16-31..... 25
Nov. 1-15..... 35	Nov. 1-15..... 30
Nov. 15 to close.... 37 $\frac{1}{2}$	Nov. 15 to close.... 32 $\frac{1}{2}$

80 *Average Annual Freight Rates on Wheat, July 1, 1909-June 30, 1914.*

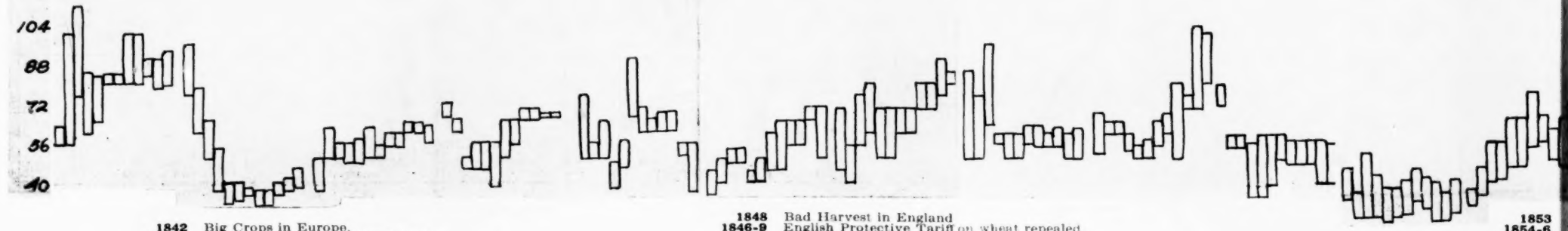
Buffalo to New York.....	8.1 cents per bu.
Winnipeg to Minneapolis.....	7.2
Minneapolis to Chicago.....	6
Kansas City to Chicago.....	7.2

Cents
per bu.

1841-2 1842-3 1843-4 1844-5 1845-6 1846-7 1847-8 1848-9 1849-50 1850-1 1851-2 1852-3

328
312
296
280
264
248
232
216
200
184
168
152
136
120
104
88
72
56
40

Fig. 1
Cash Wheat Prices in Chicago 1841-1870
Monthly by Crop years

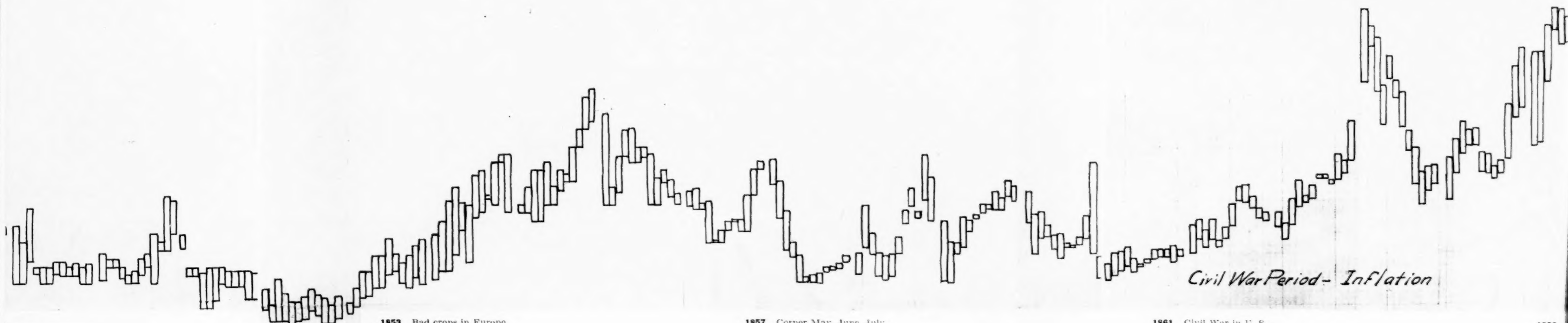


1842 Big Crops in Europe.
1843-6 Potato Crop Disease, Great Britain.
1845-6 Bad Harvests in Germany.
1846 Bad English Harvests. Miller's demand slack.
1847 Irish famine.

1848 Bad Harvest in England
1846-9 English Protective Tariff on wheat repealed
1848 Revolutions in Europe.
1850 May corner.

1853
1854-6
1855
1857

1848-9 1849-50 1850-1 1851-2 1852-3 1853-4 1854-5 1855-6 1856-7 1857-8 1858-9 1859-60 1860-1 1861-2 1862-3 1863-4 1864-5 1865-6 1866



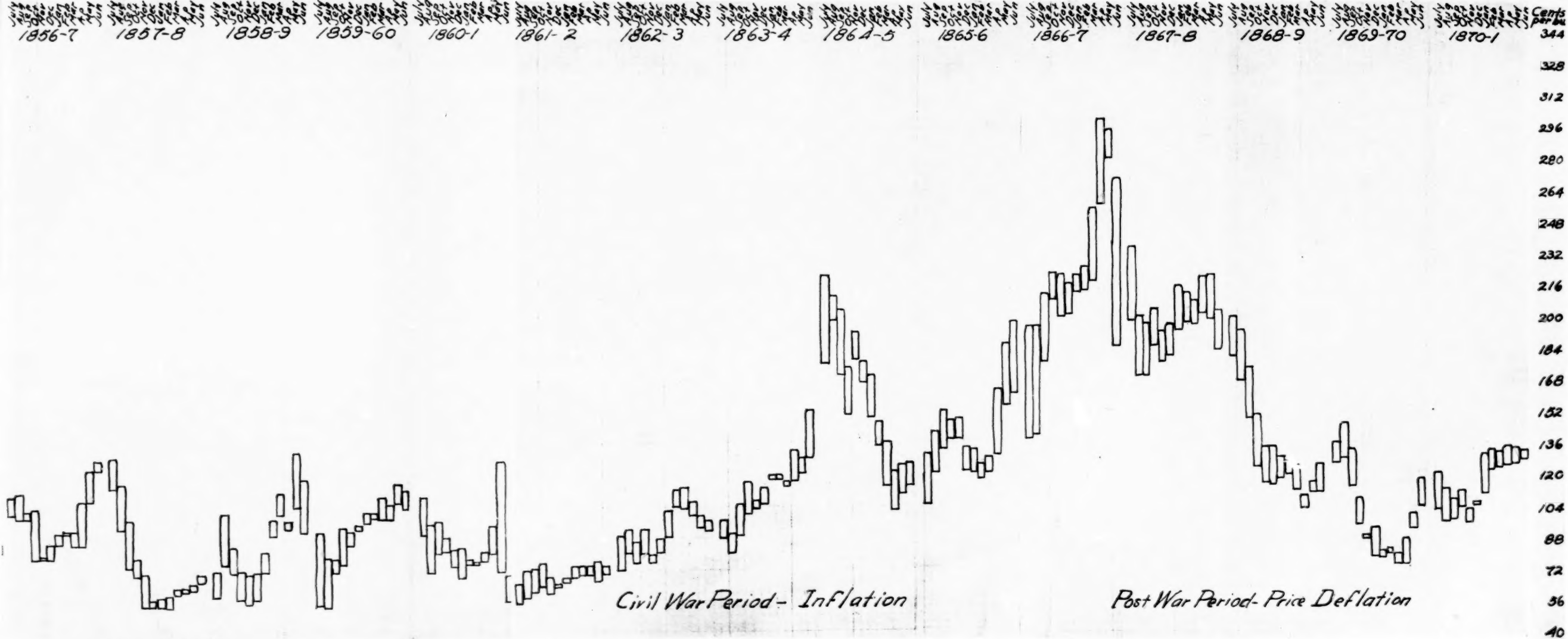
on wheat repealed

1853 Bad crops in Europe.
1854-6 Bad crops in Germany
1854-6 Crimean War.
1855 Corner May, June, July.
1857 Indian Mutiny

1857 Corner May, June, July.
1858 Corner August.
1859 Italian War.
1859 Corner May, June.

1861 Civil War in U. S.
1861 Corner May.
1862 Commercial panic.
1863 Large Harvest in England. Polish insurrection.
1864 Corner July, English drouth, Schleswig Holstein War.
1865 Wet English summer. Cattle Plague

1866
1866-8
1867
1869
1870
1870-1



1857 Corner May, June, July
 1858 Corner August
 1859 Italian War
 1859 Corner May, June

1861 Civil War in U. S.
 1861 Corner May.
 1862 Commercial panic.
 1863 Large Harvest in England. Polish insurrection.
 1864 Corner July, English drouth, Schleswig Holstein War.
 1865 Wet English summer. Cattle Plague

1866 Wet English harvest. Austro-Prussian War. Austro-Italian War.
 1866-8 Poor French Crops.
 1866-8 Bad German harvests.
 1867 English drouth; large crops. Corner April, May.
 1869 Suez canal opened.
 1870 Large English crop.
 1870-1 Franco-Prussian War.

Cash prices - high and low
Futures - high only

Cash prices - high and low
Futures - high only

WEEKLY CASH FLUCTUATIONS

60 Na 2 SPRING

1871

1872

1873

1874

1875

1876

20 - 21 7
 22 8
 23 9
 24 10

JAN
1877

1999

MAF

APR

MAY

JUN

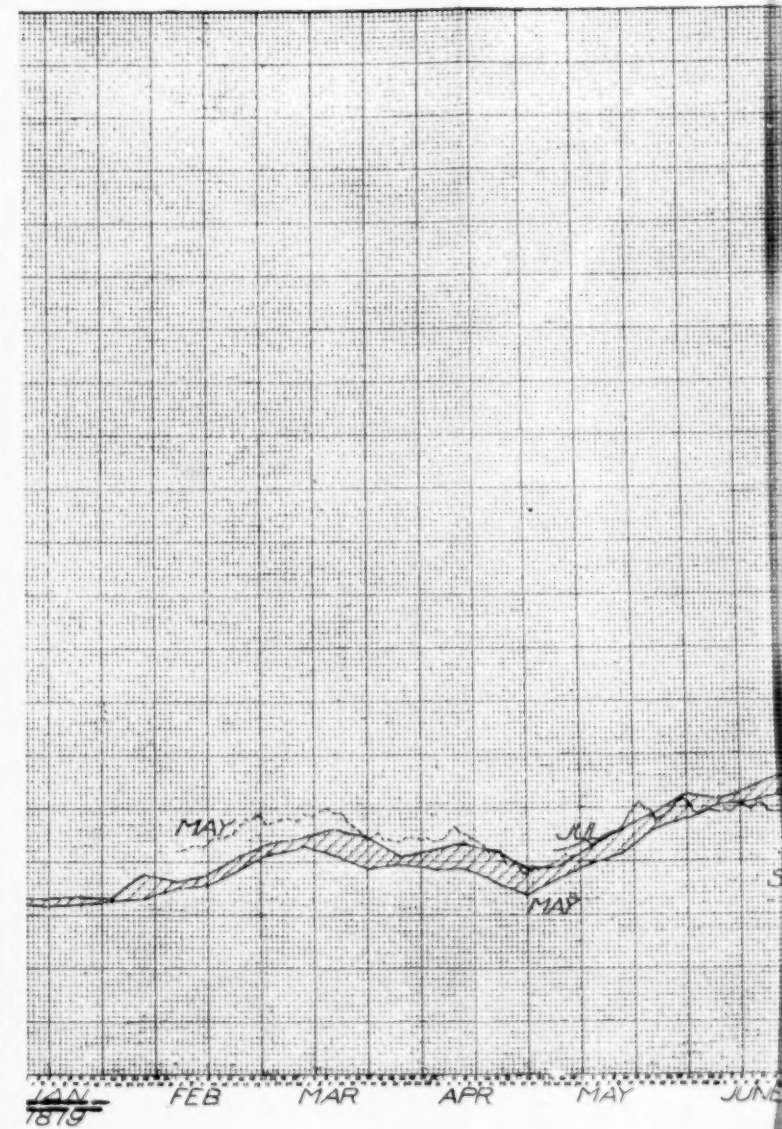
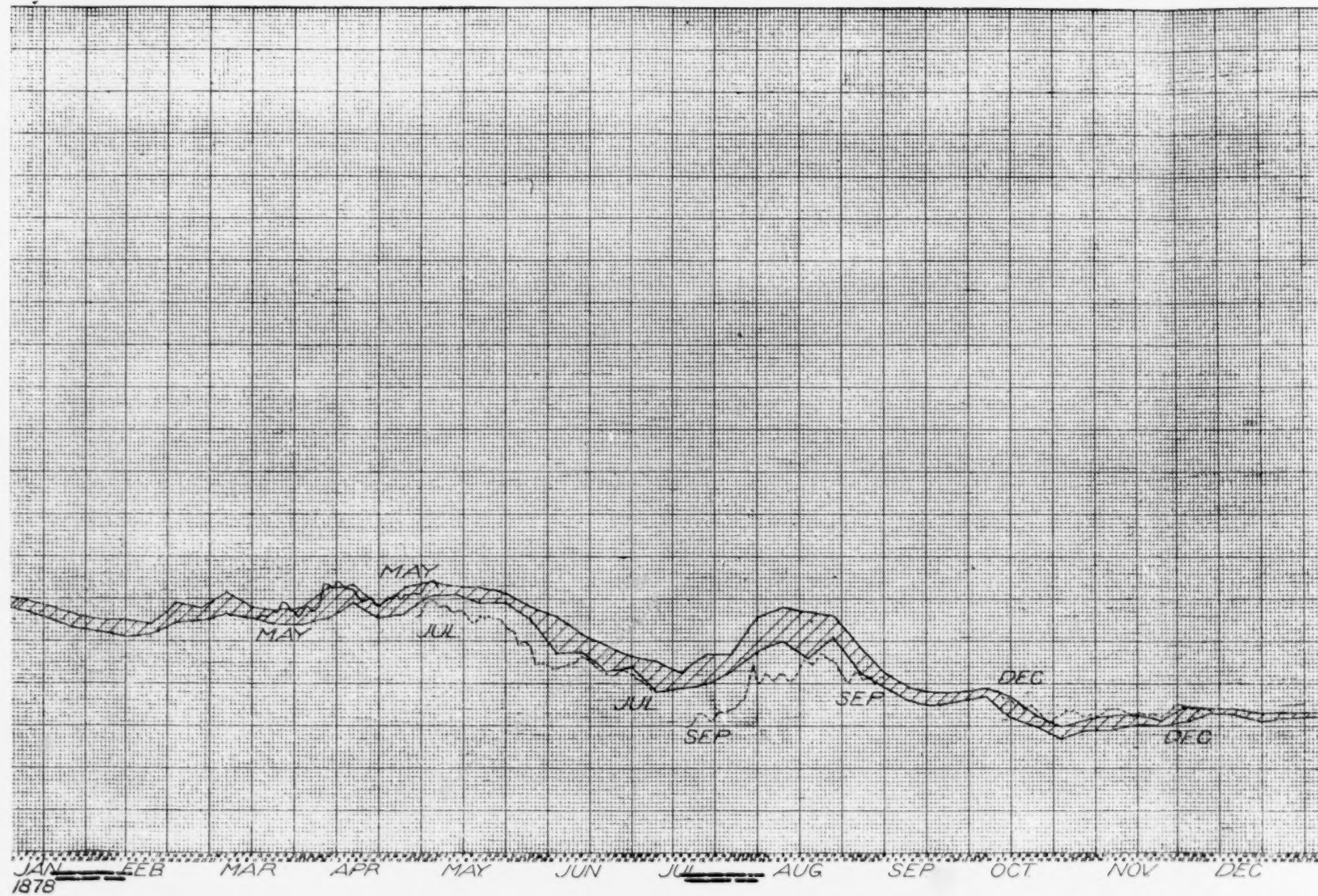
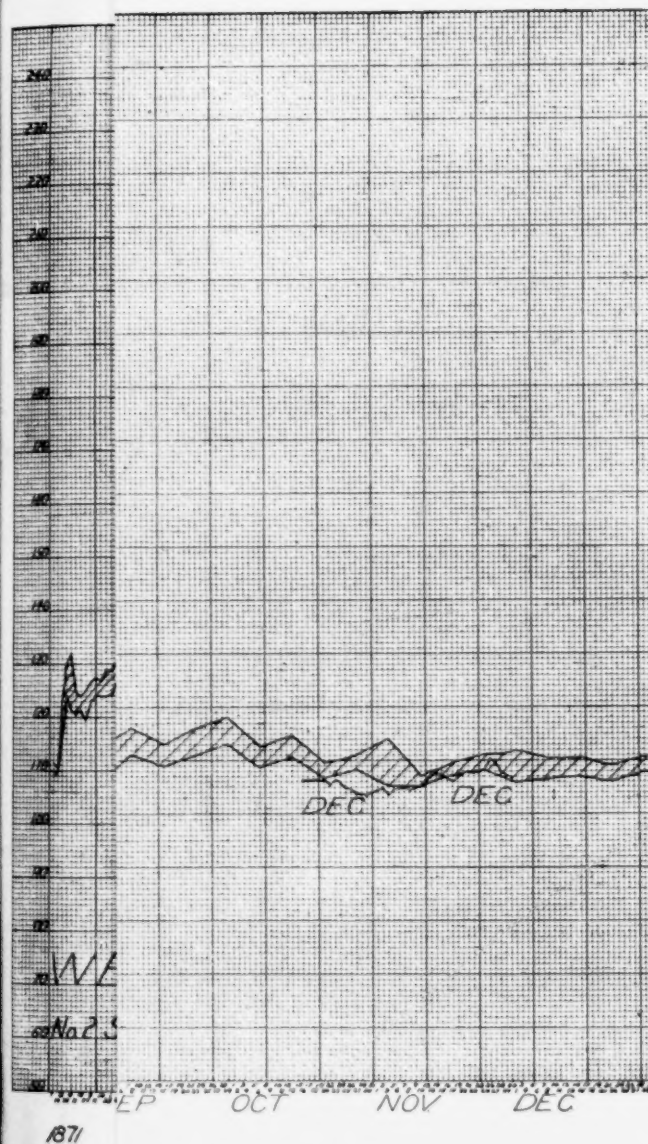
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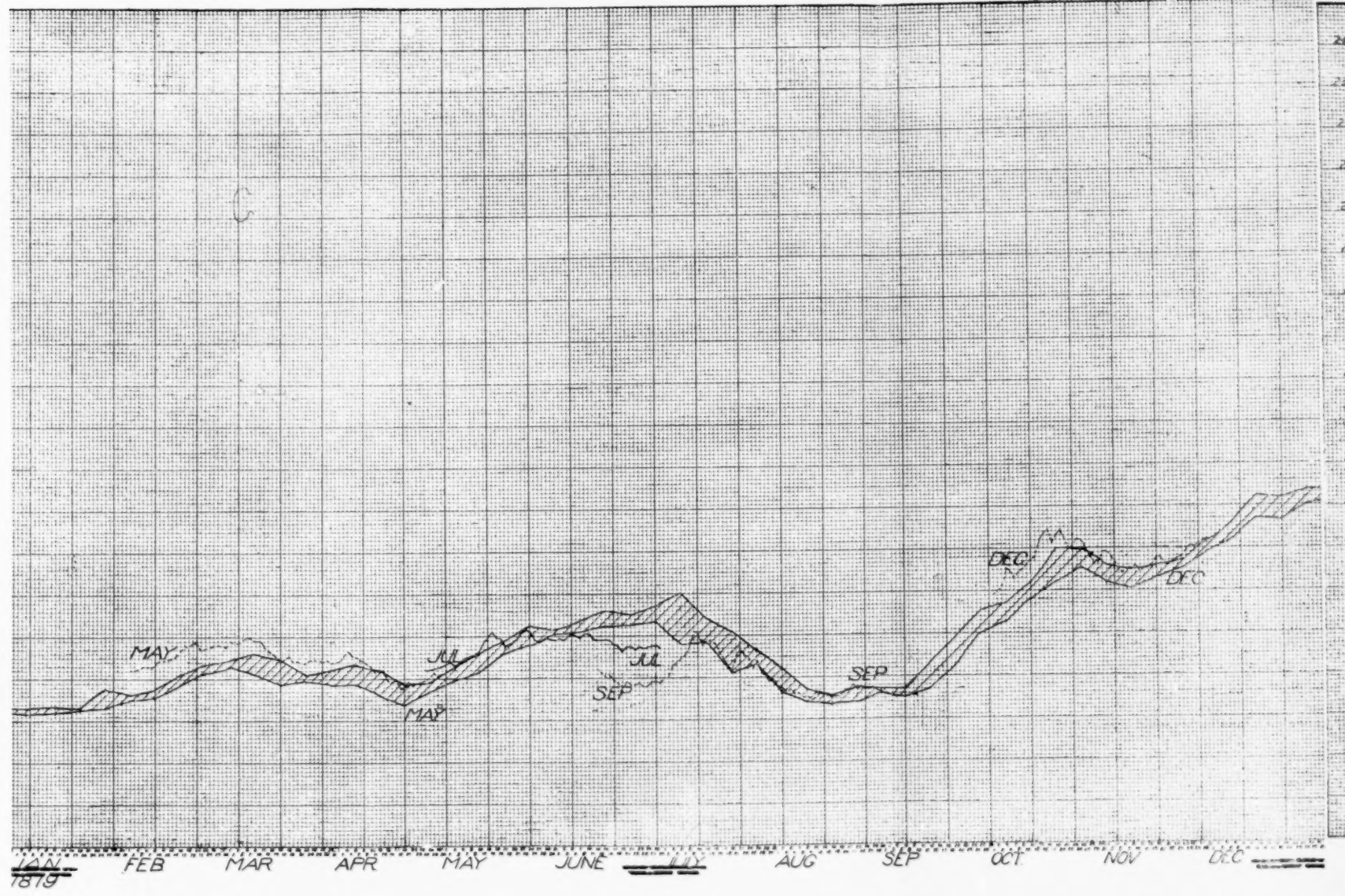
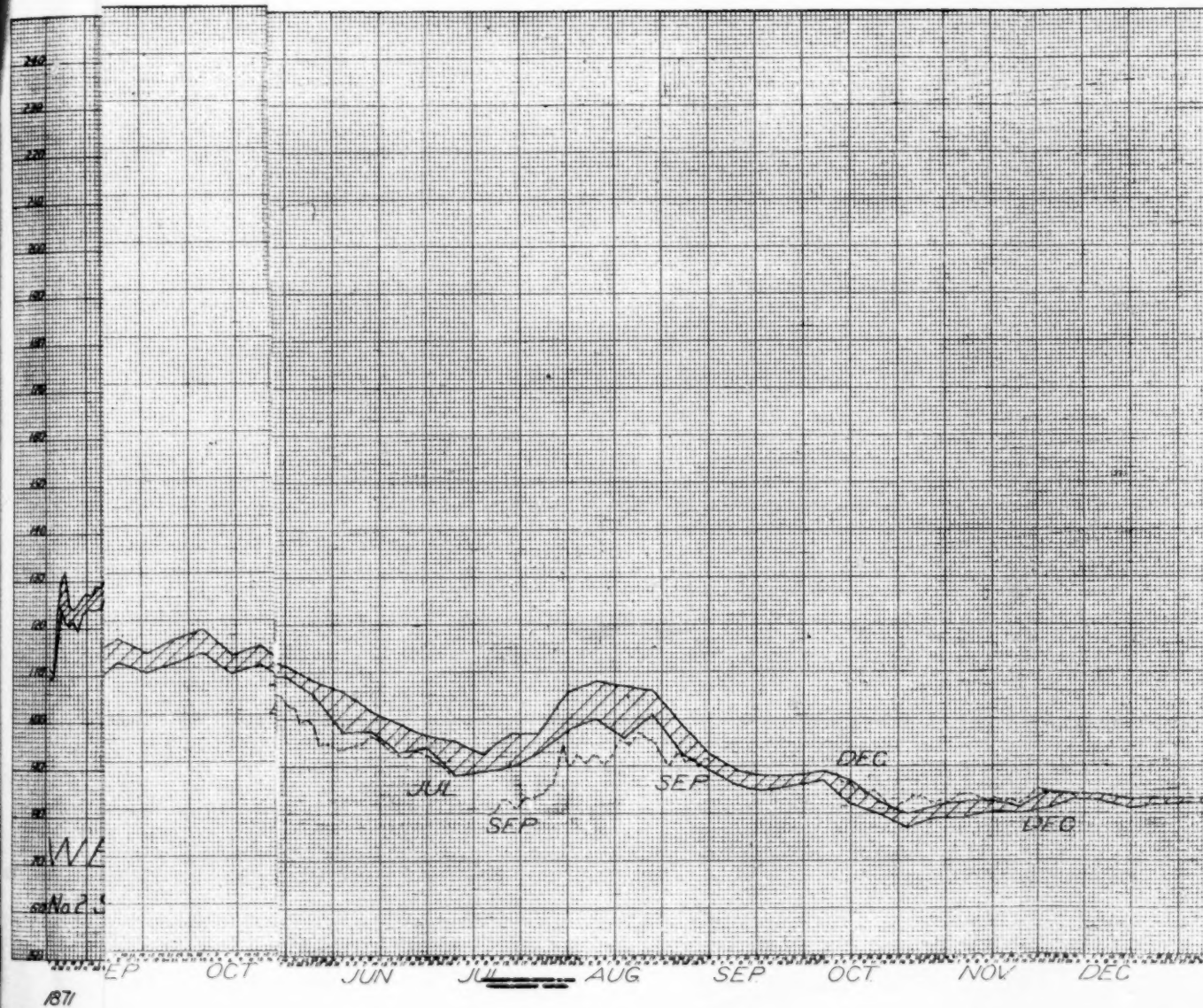
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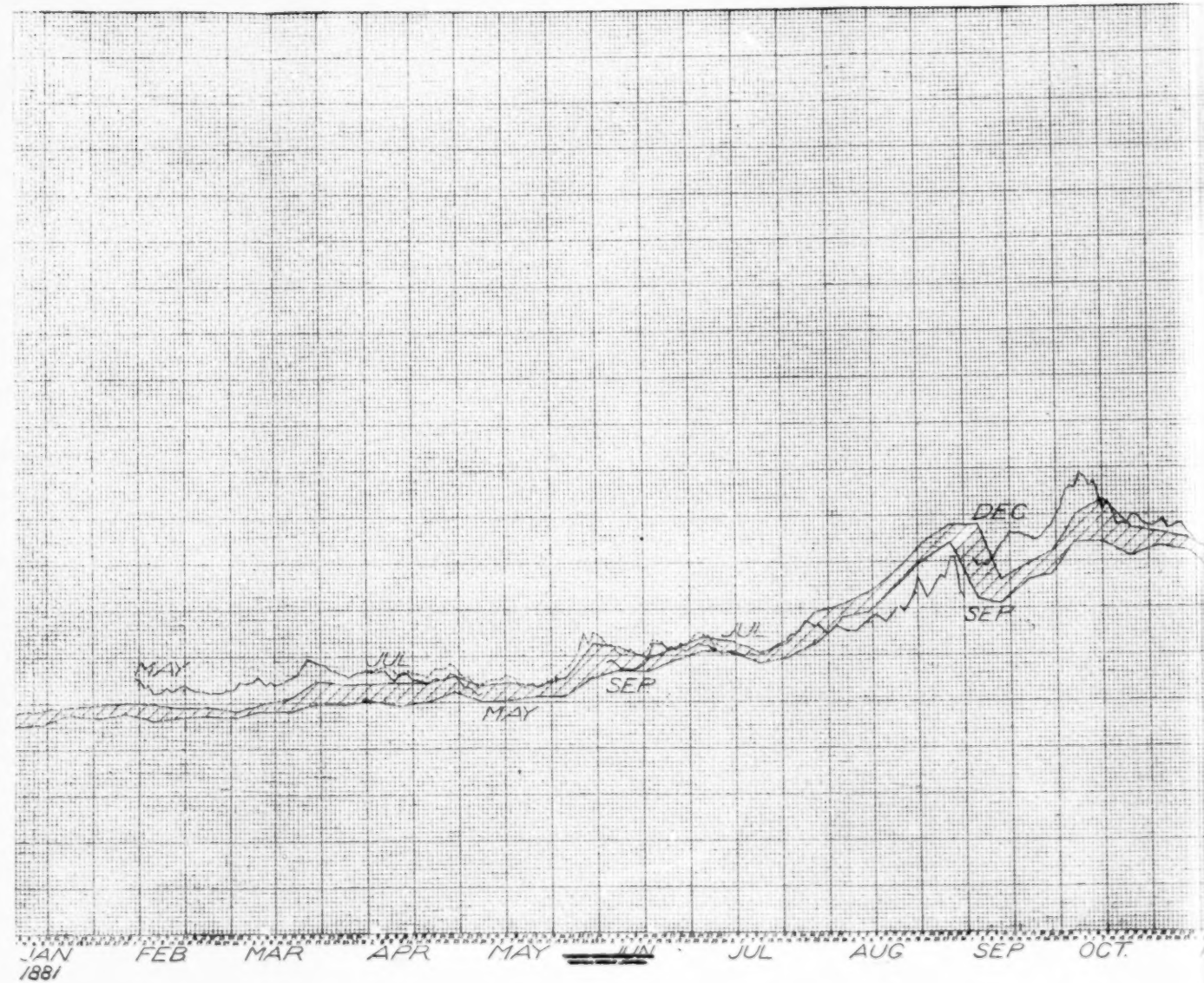
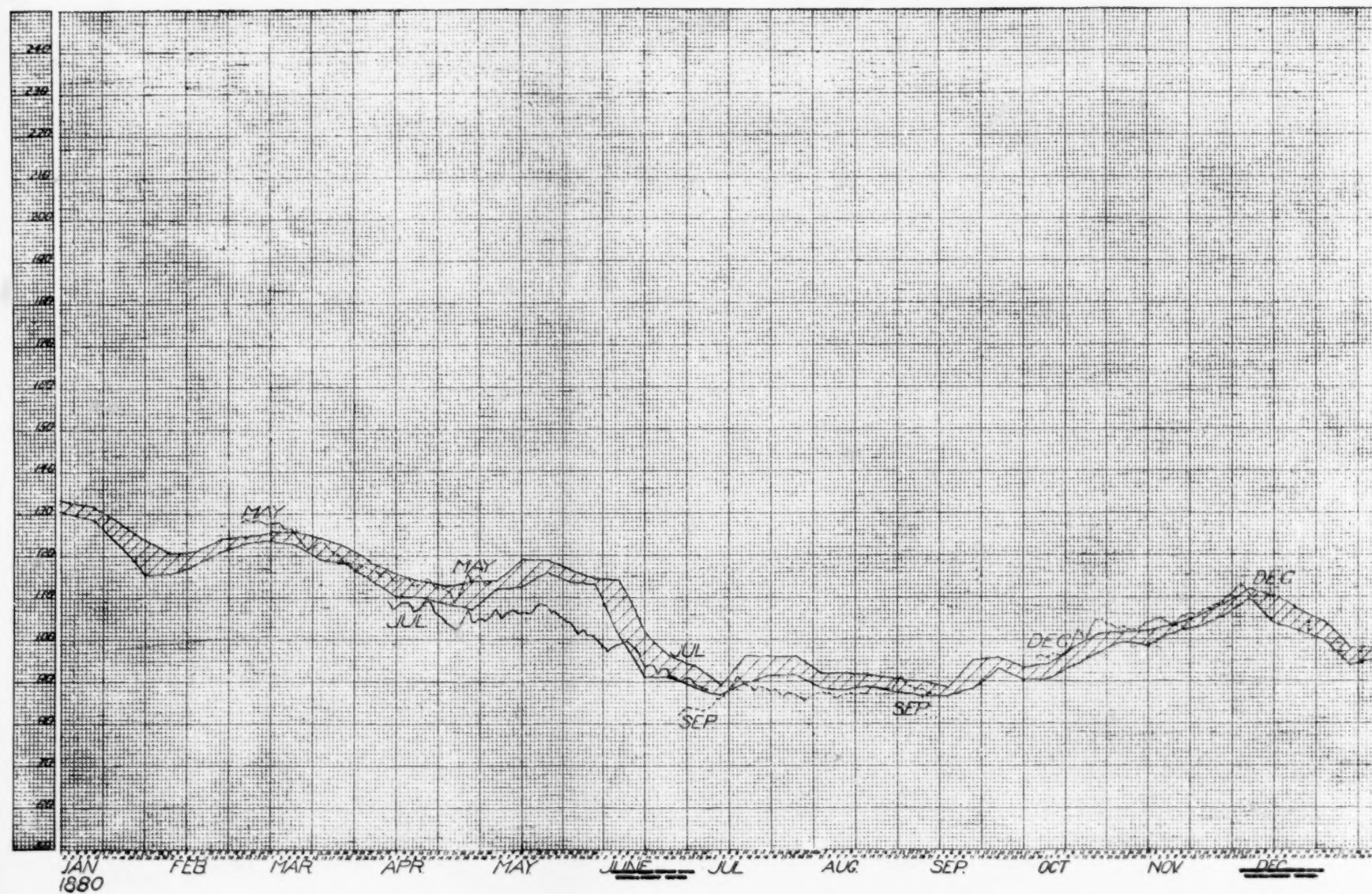
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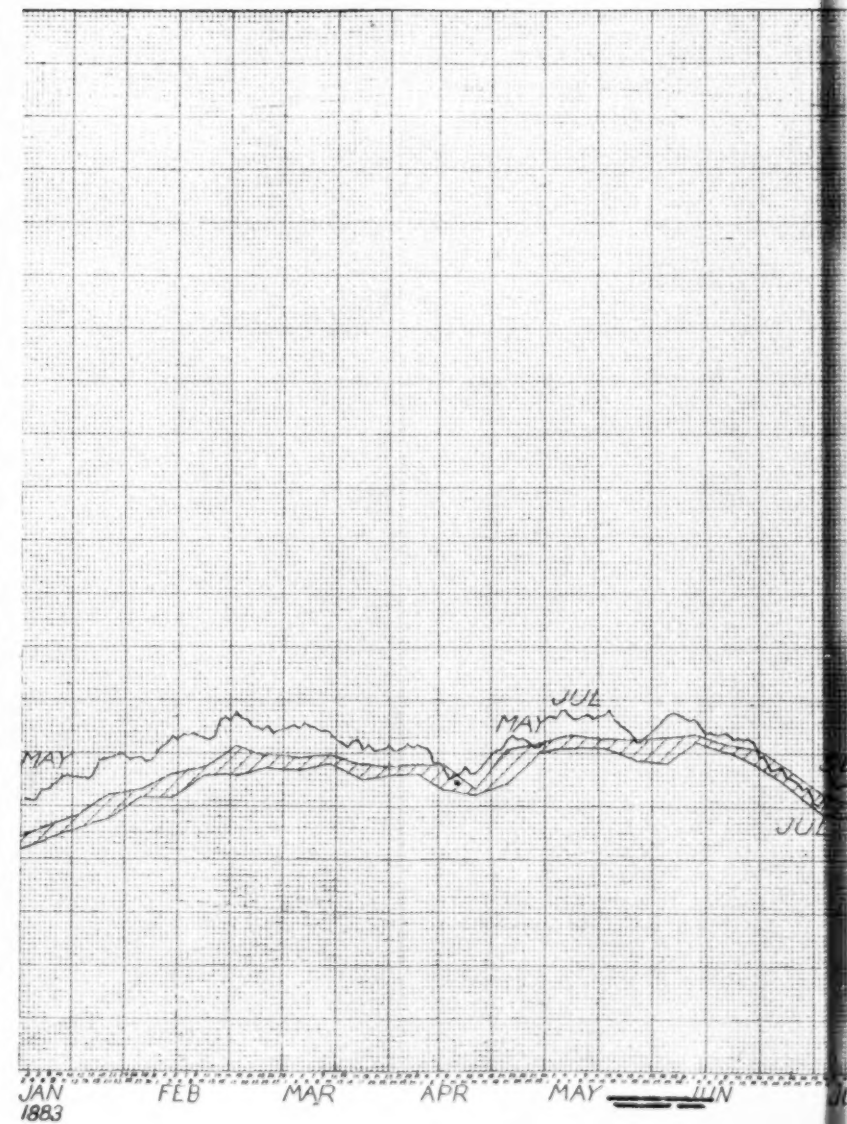
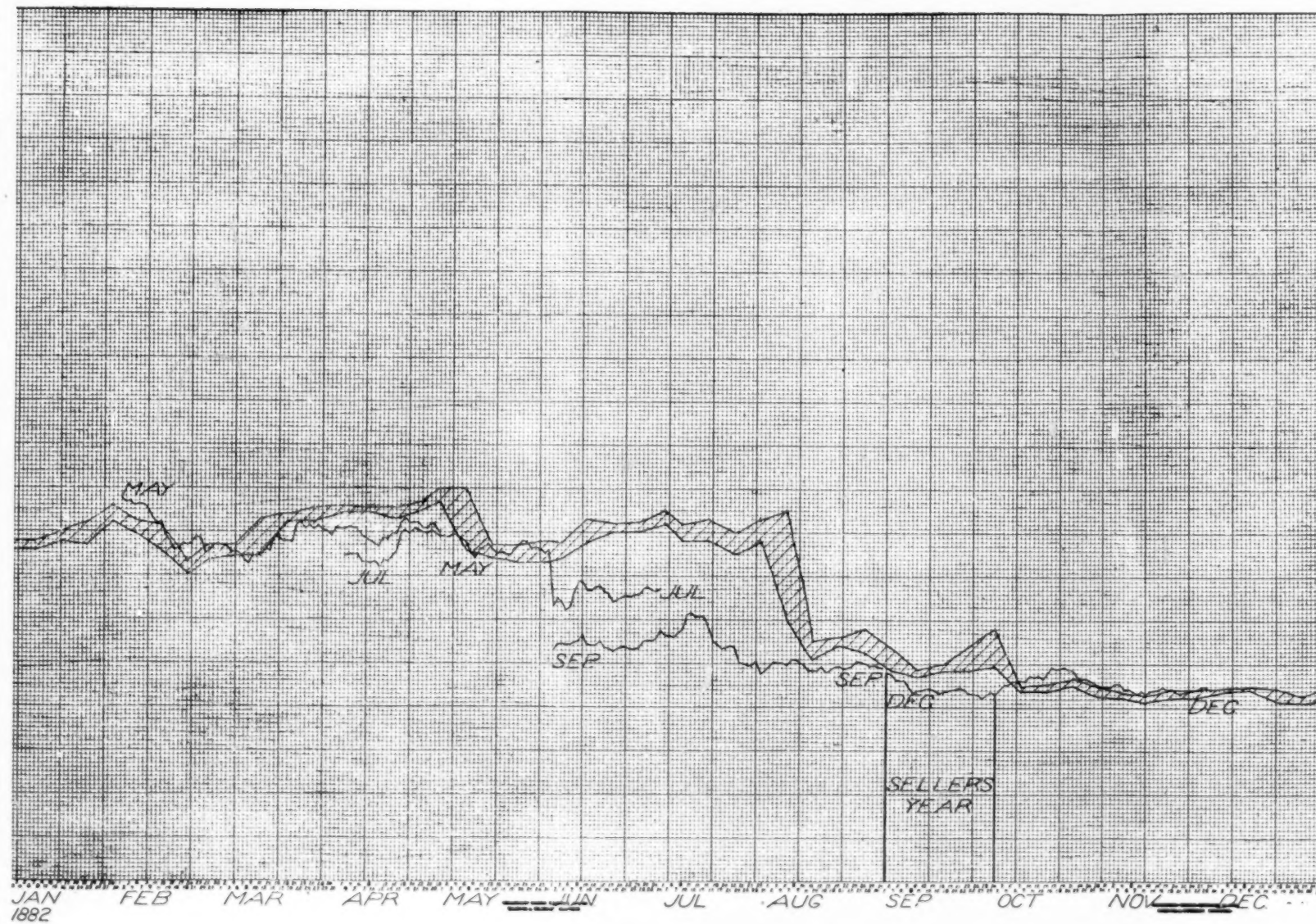
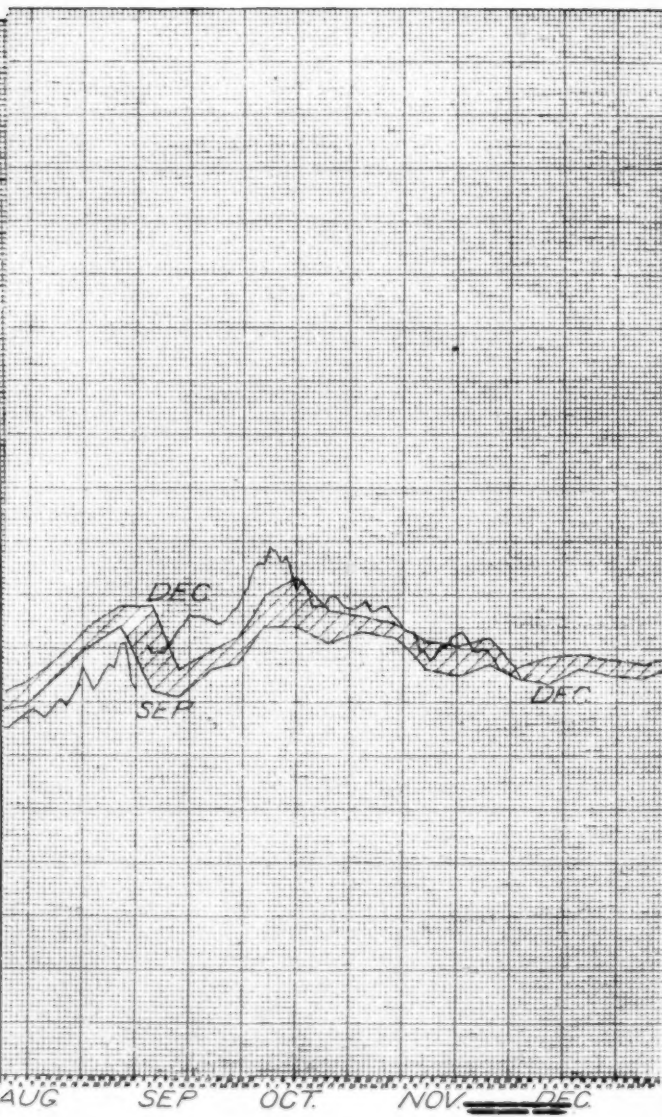
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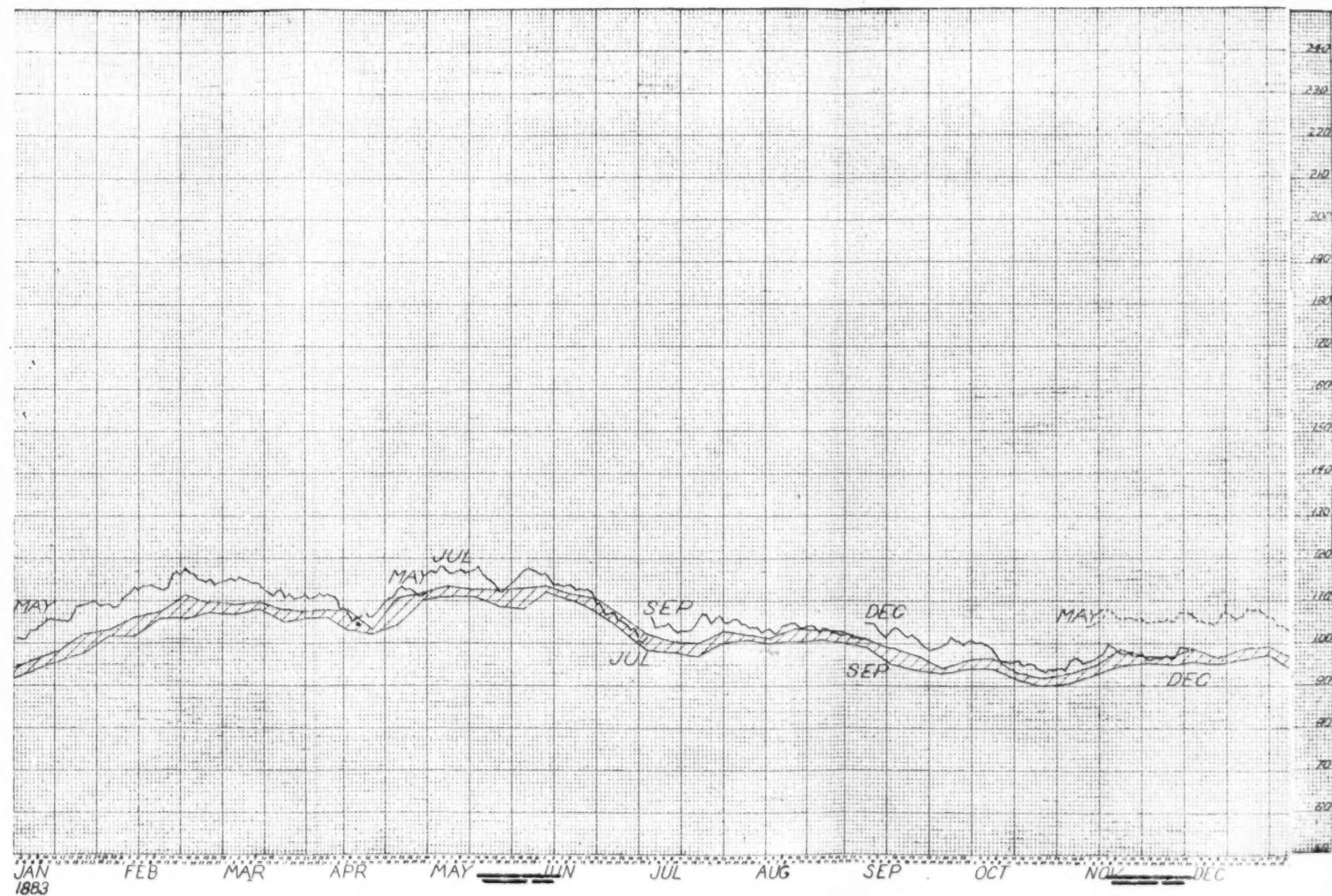
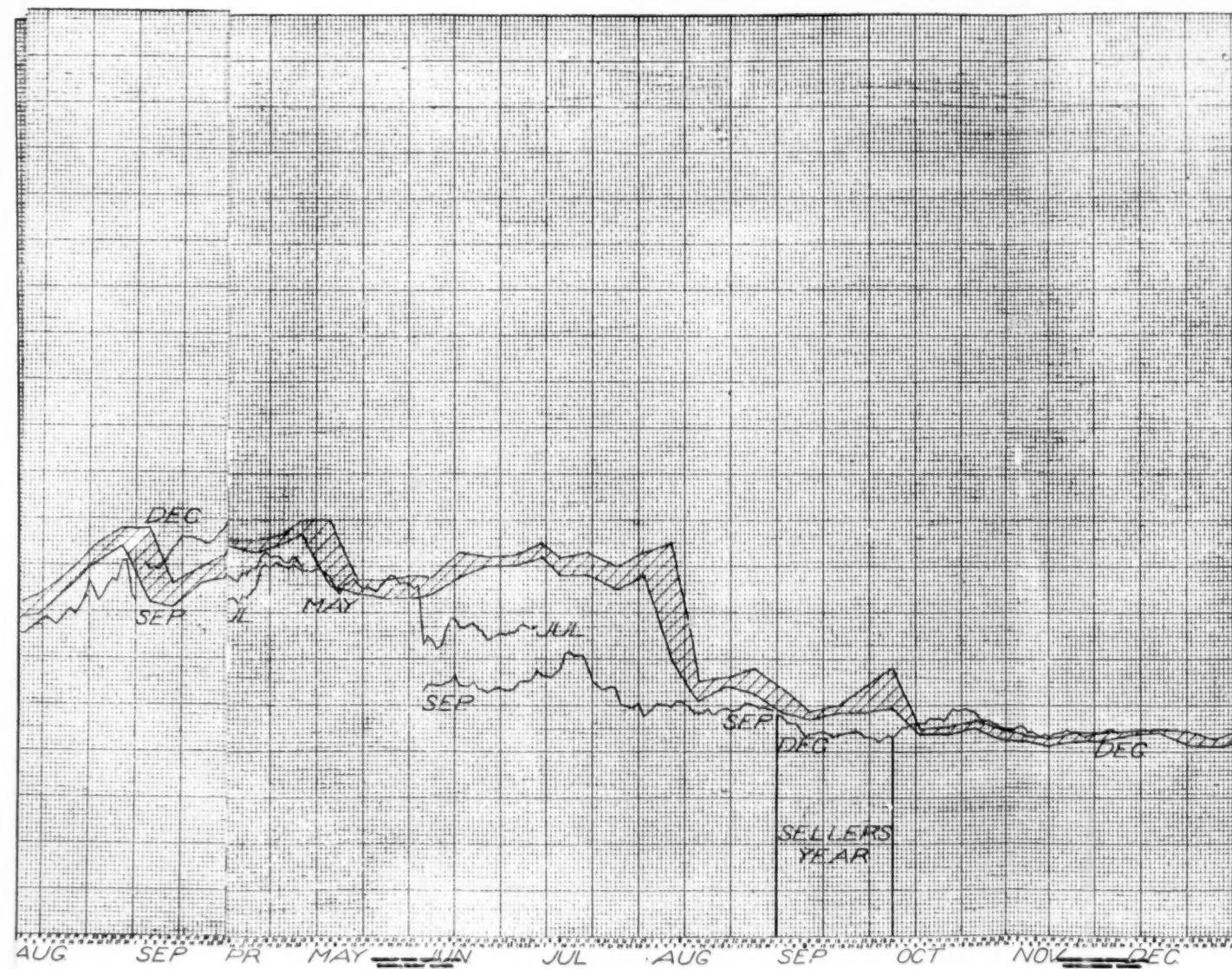
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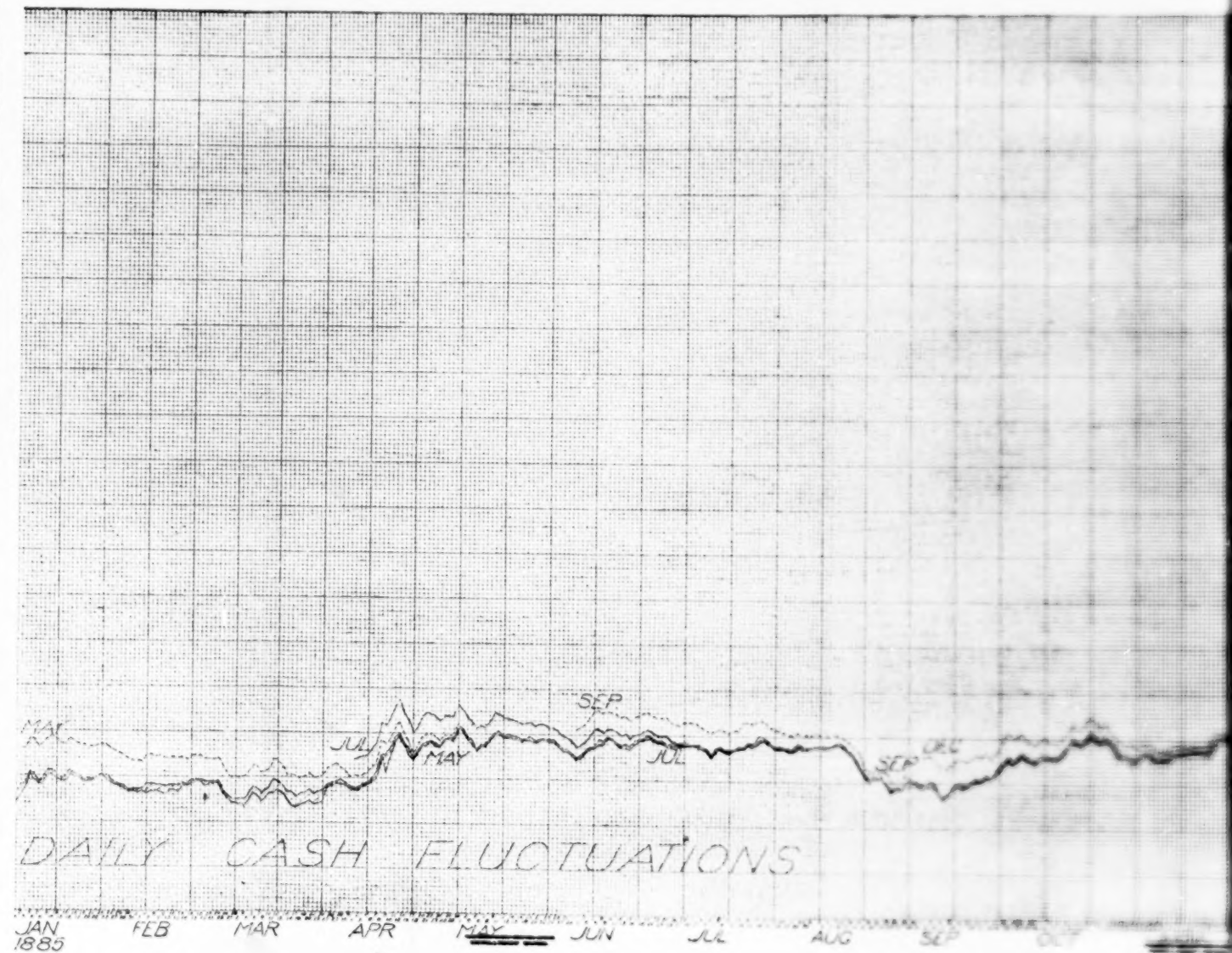
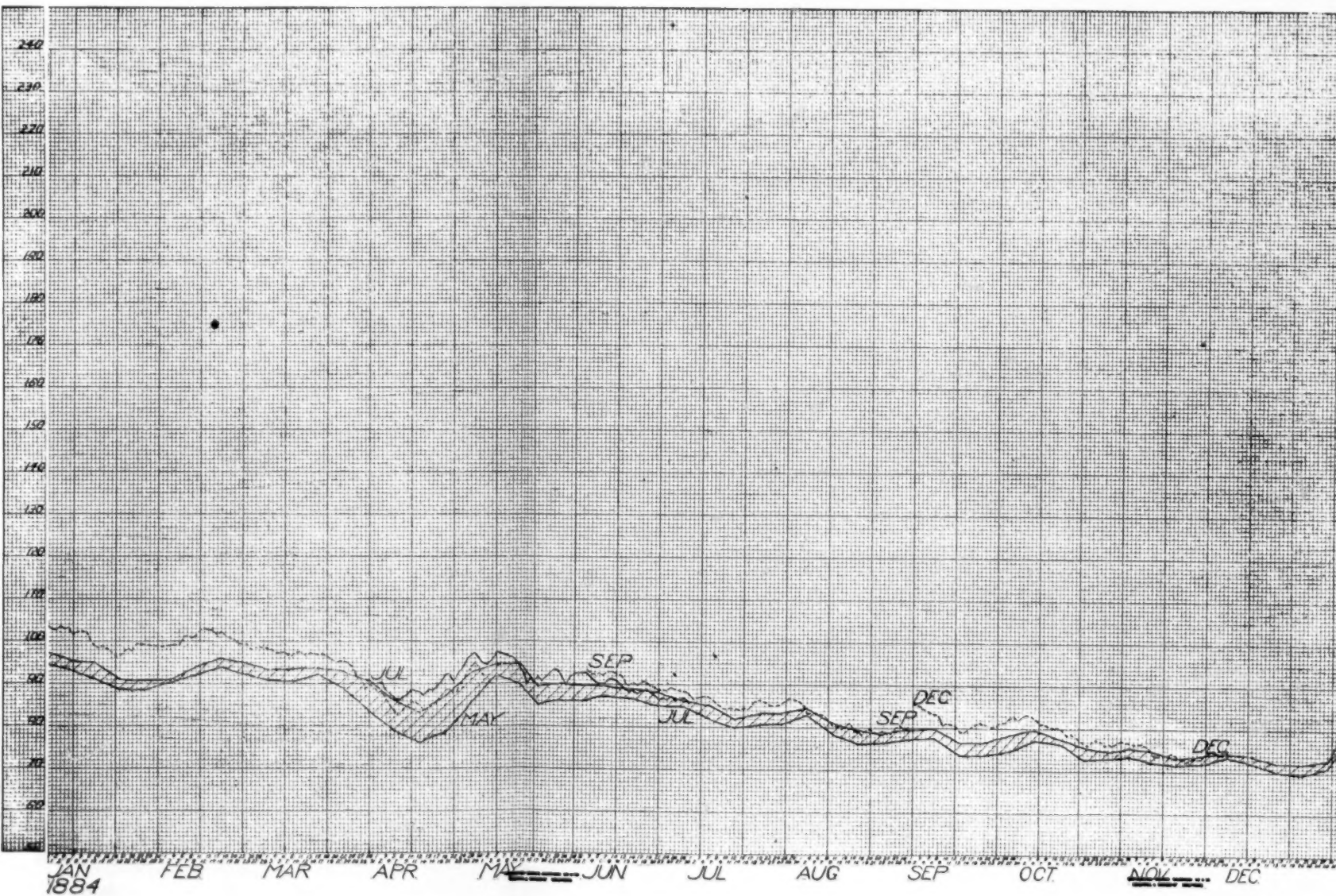


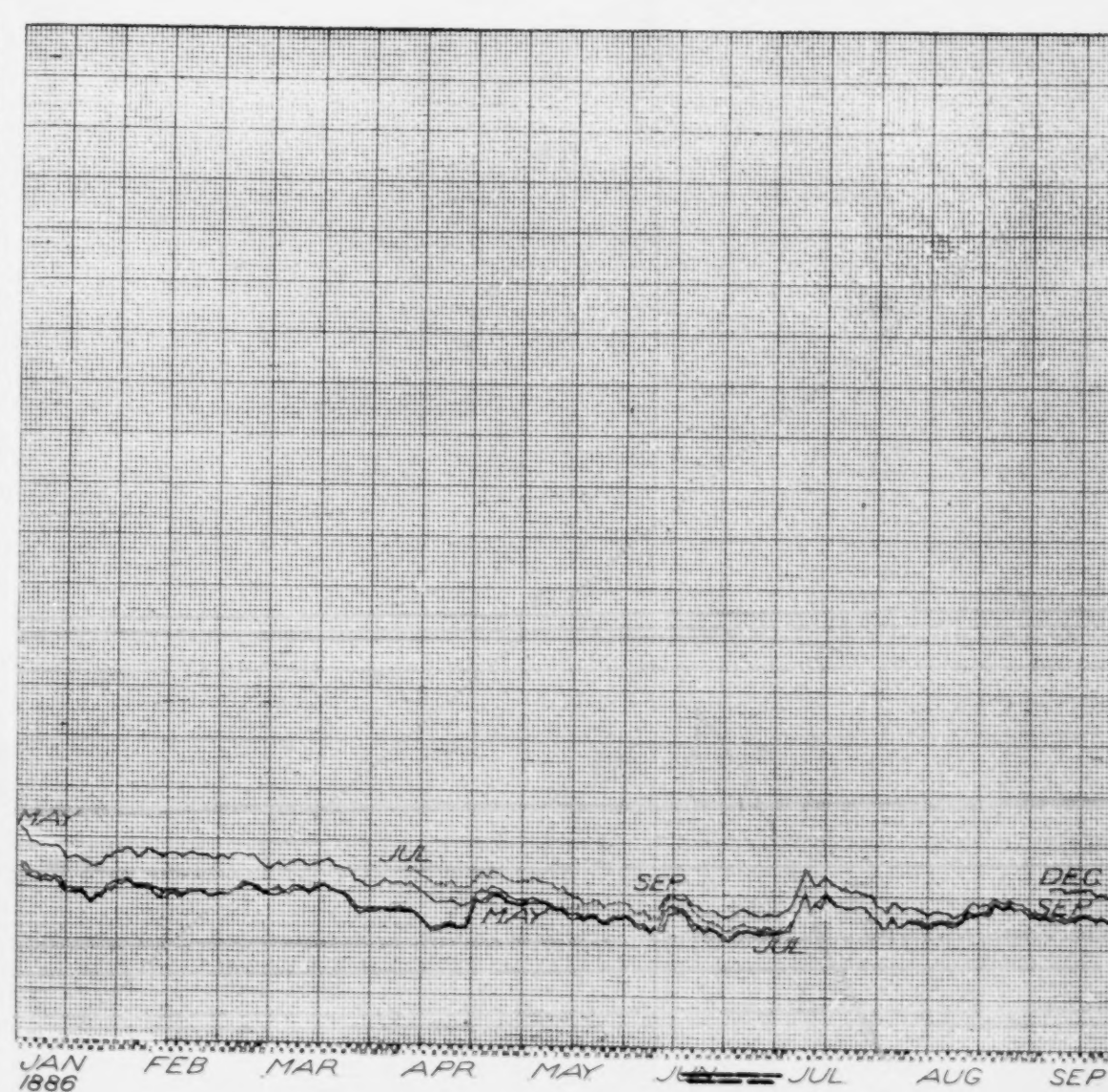
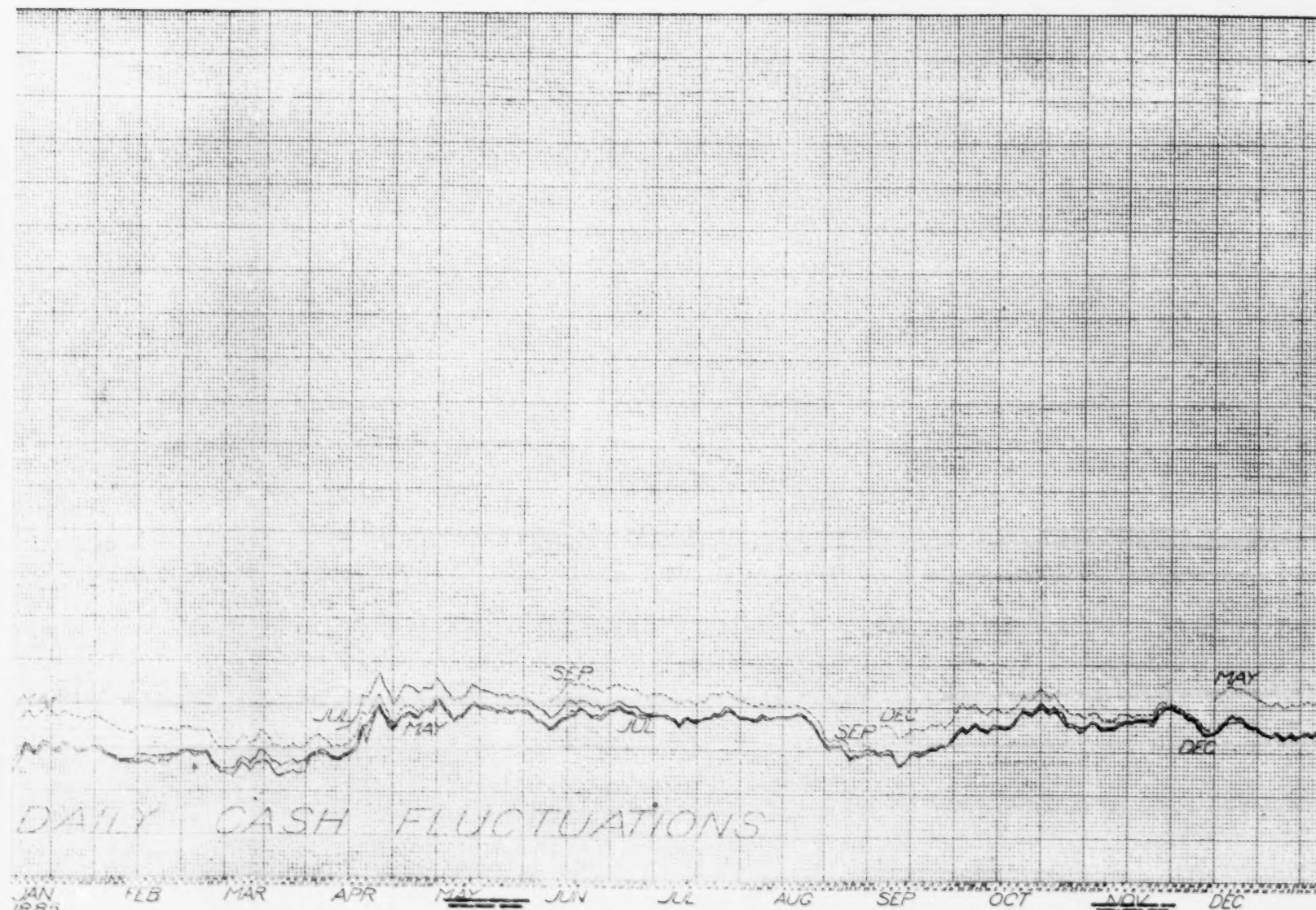
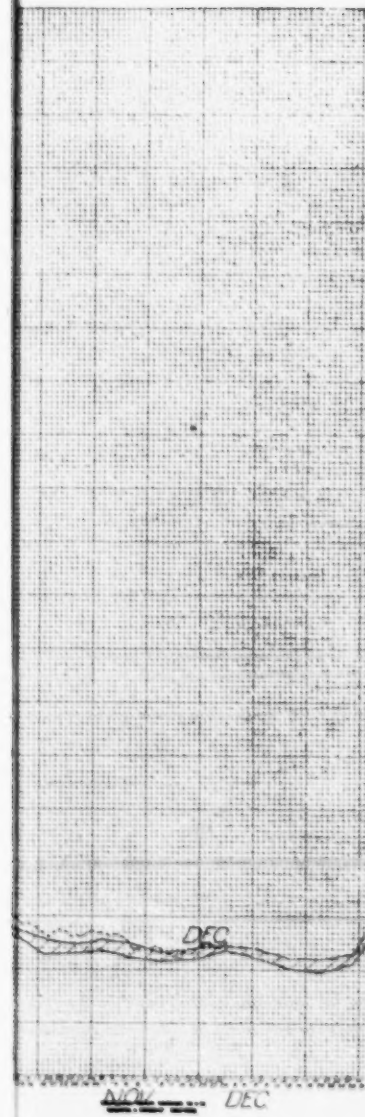


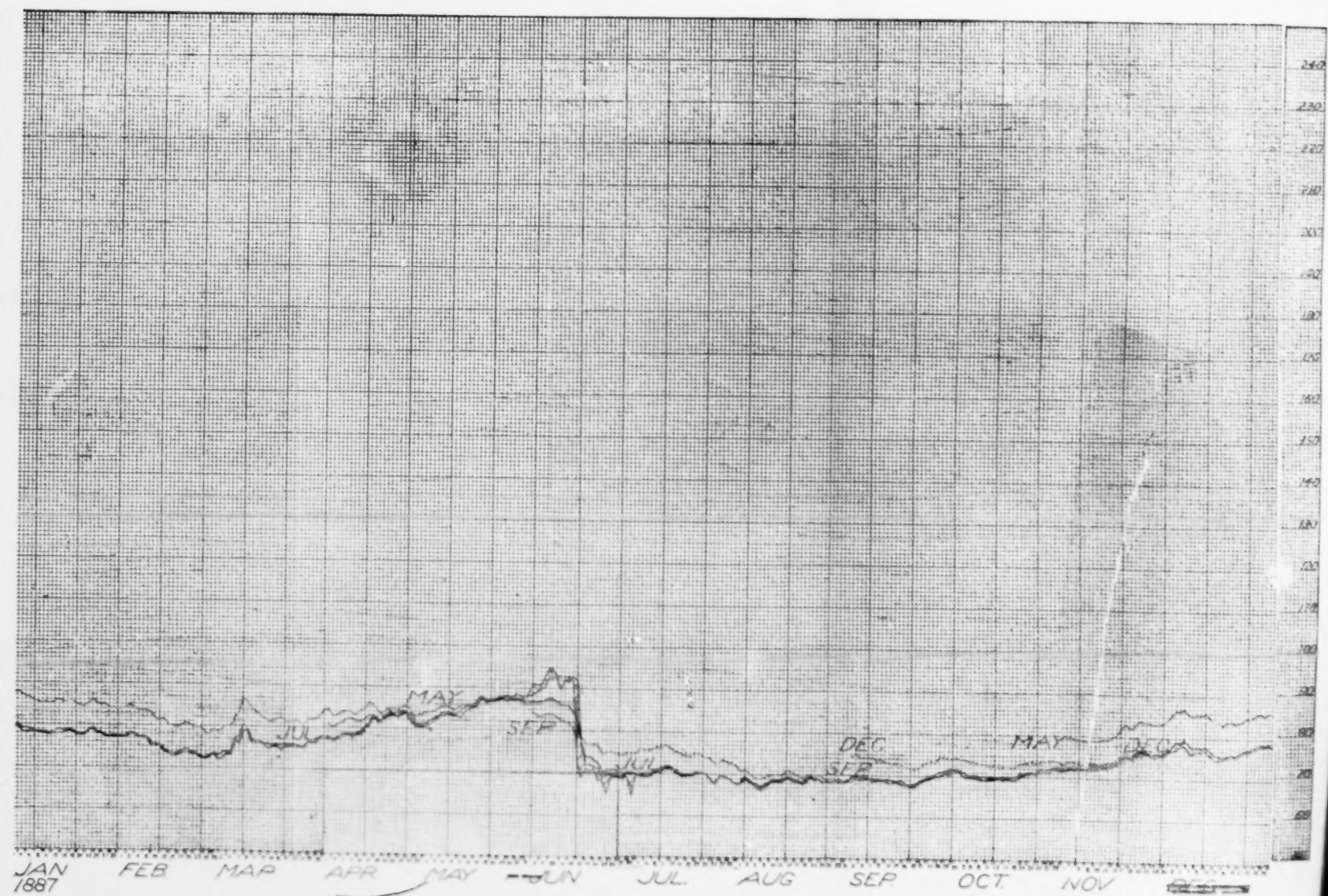
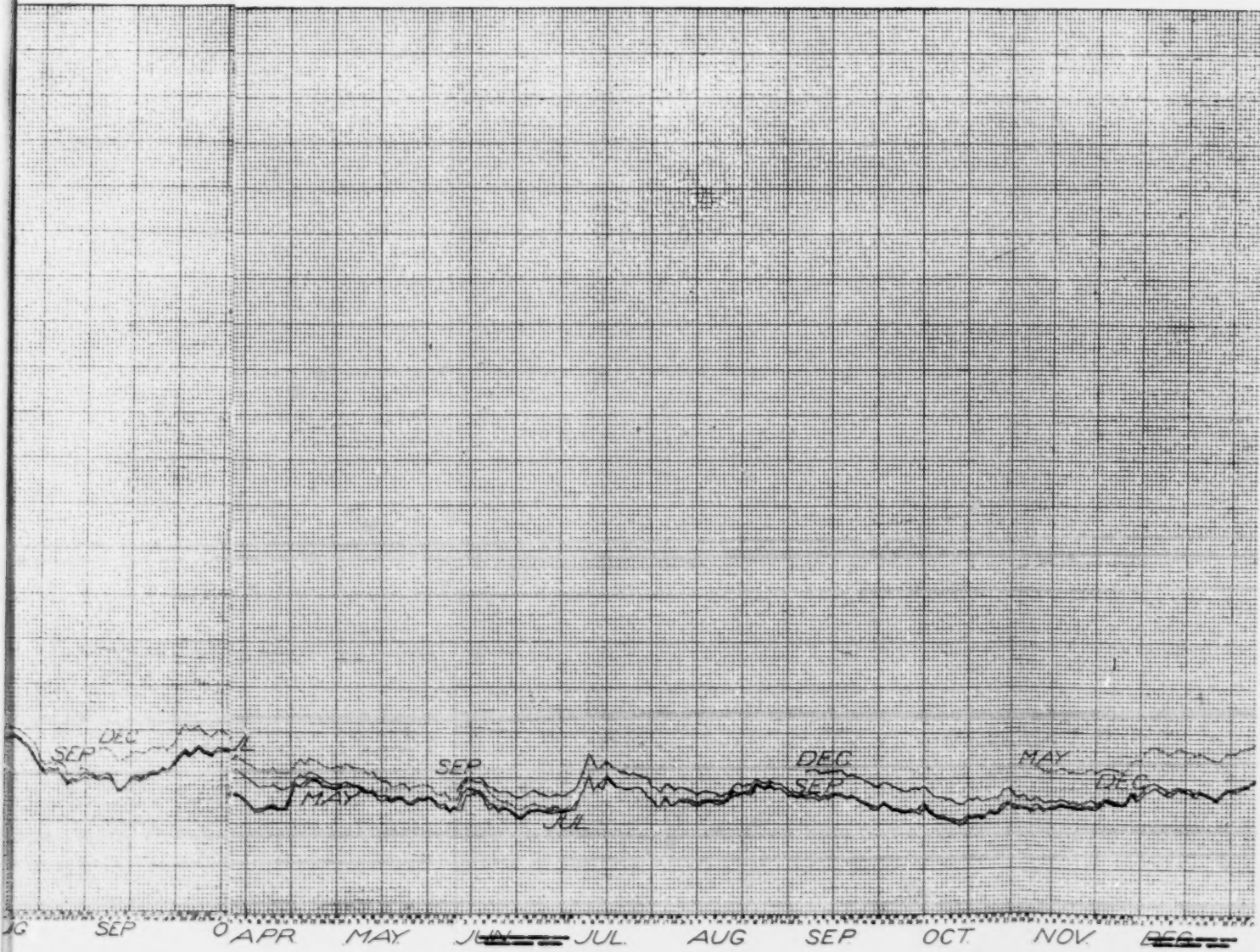


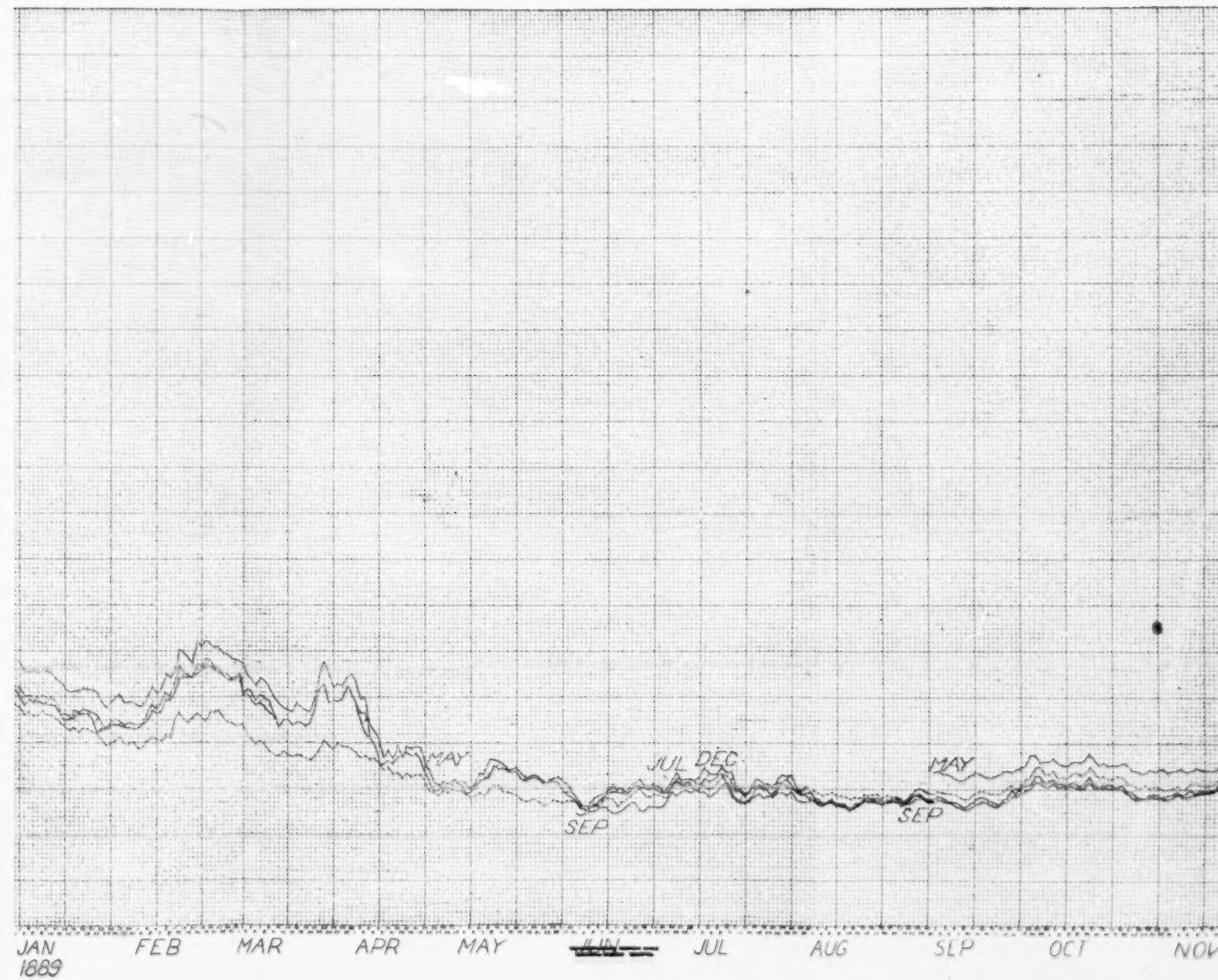
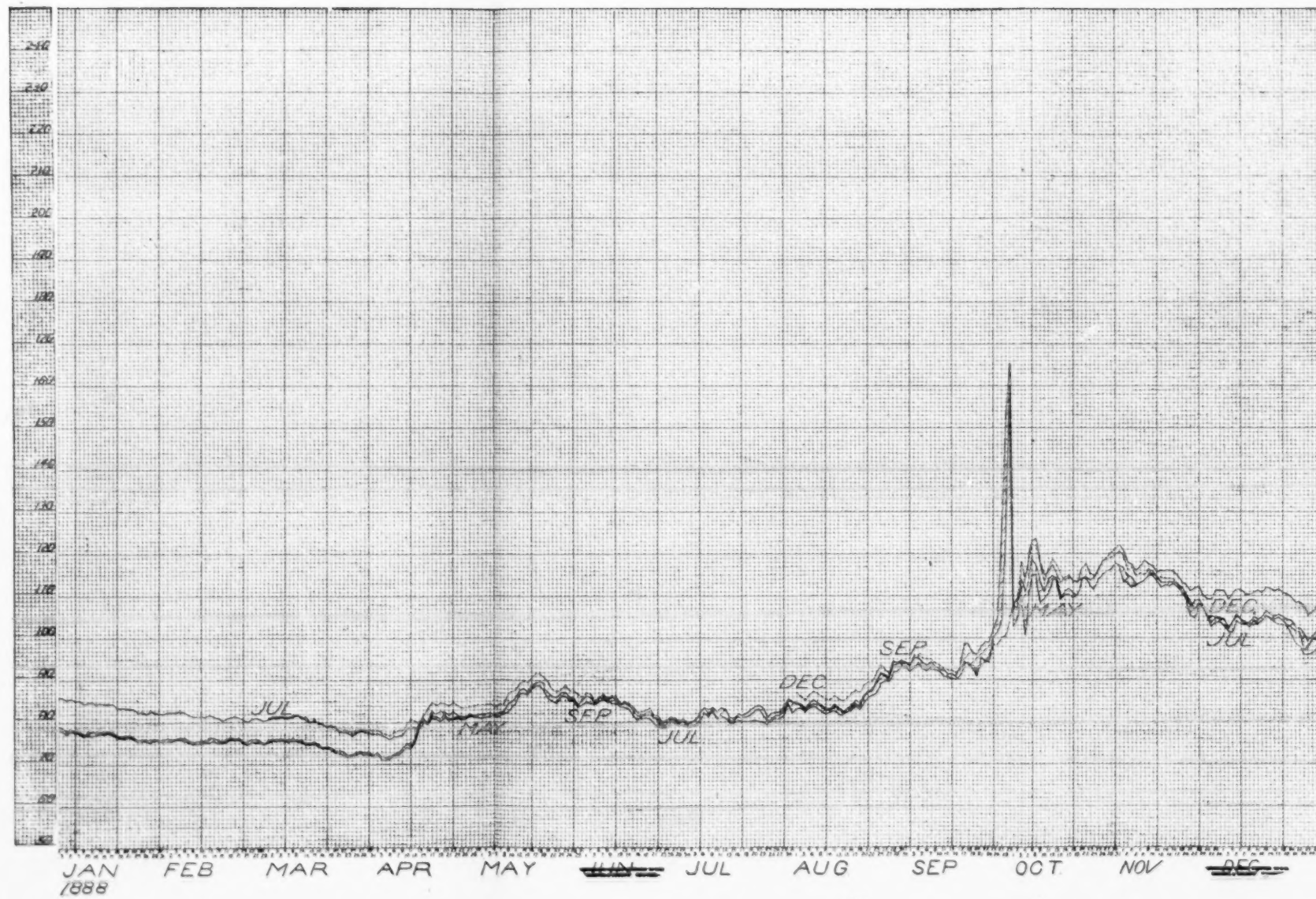


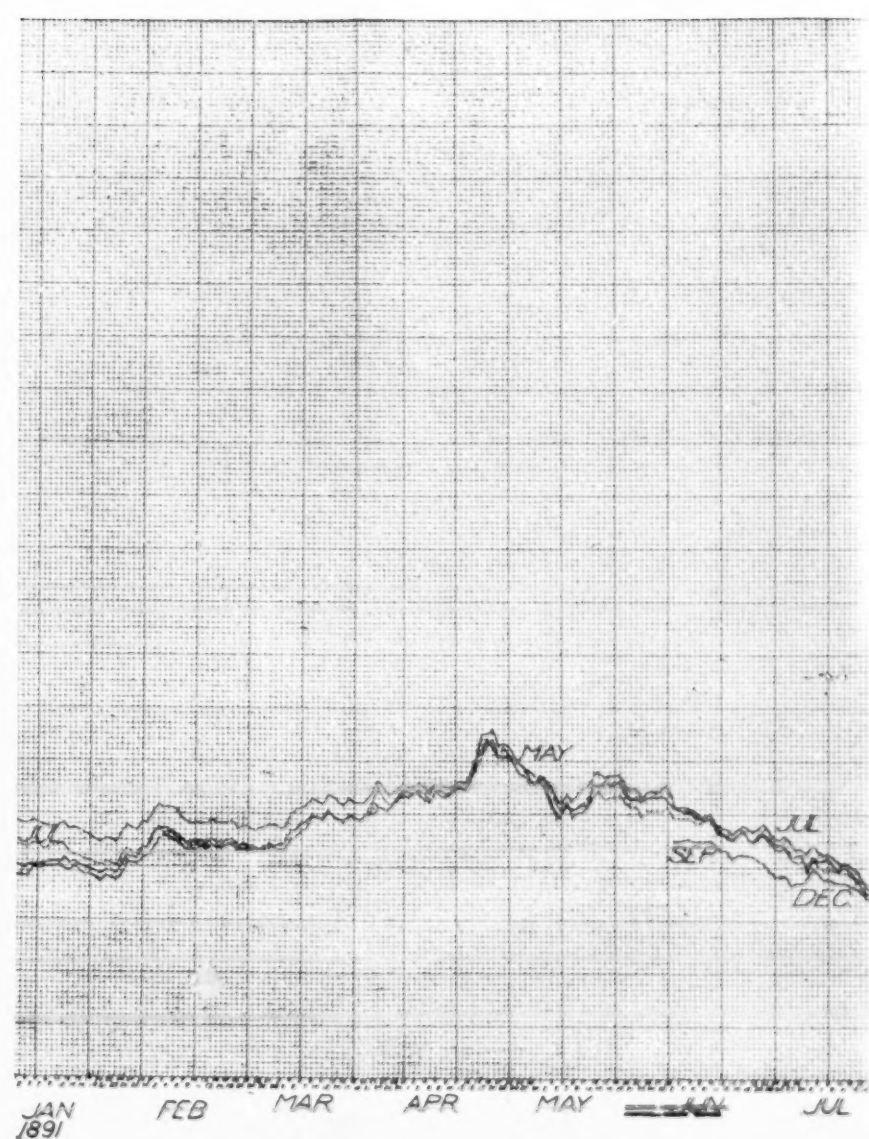
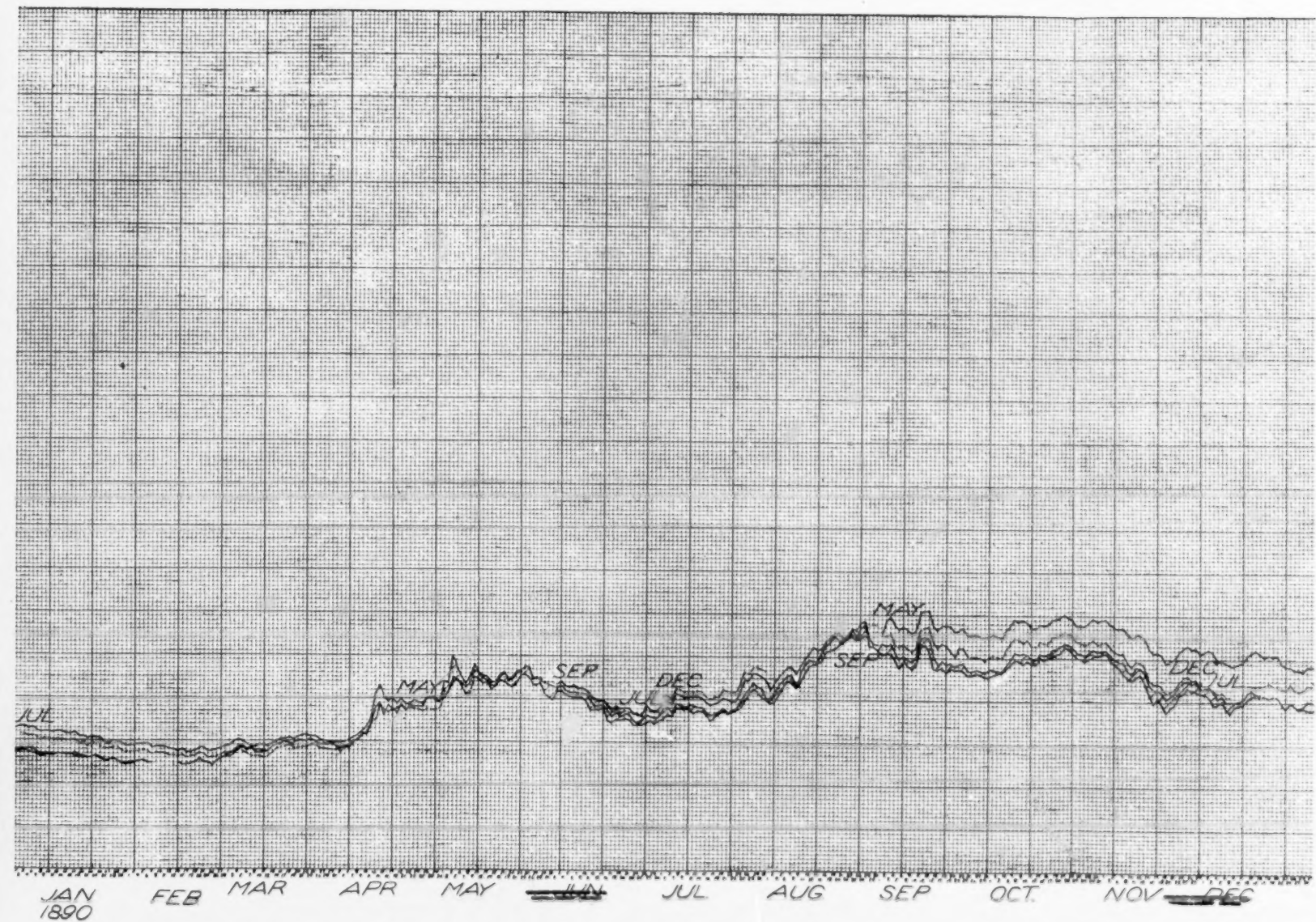
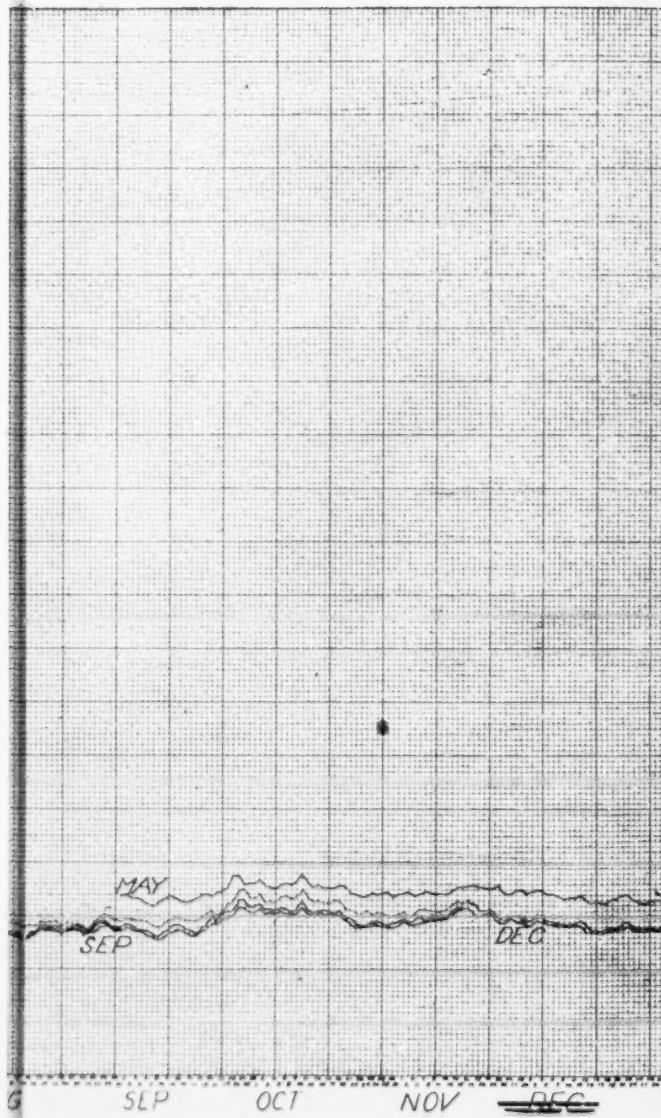


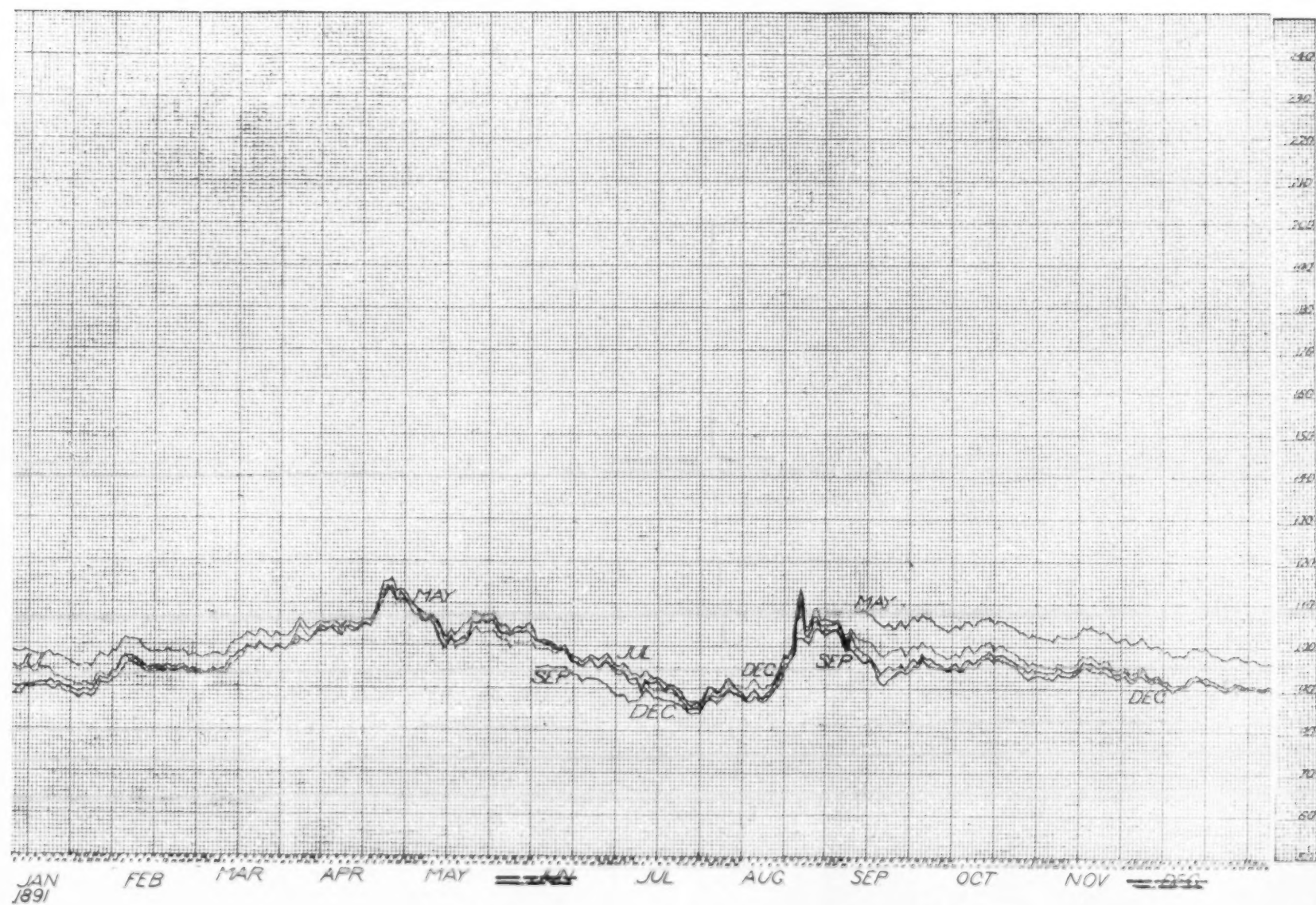
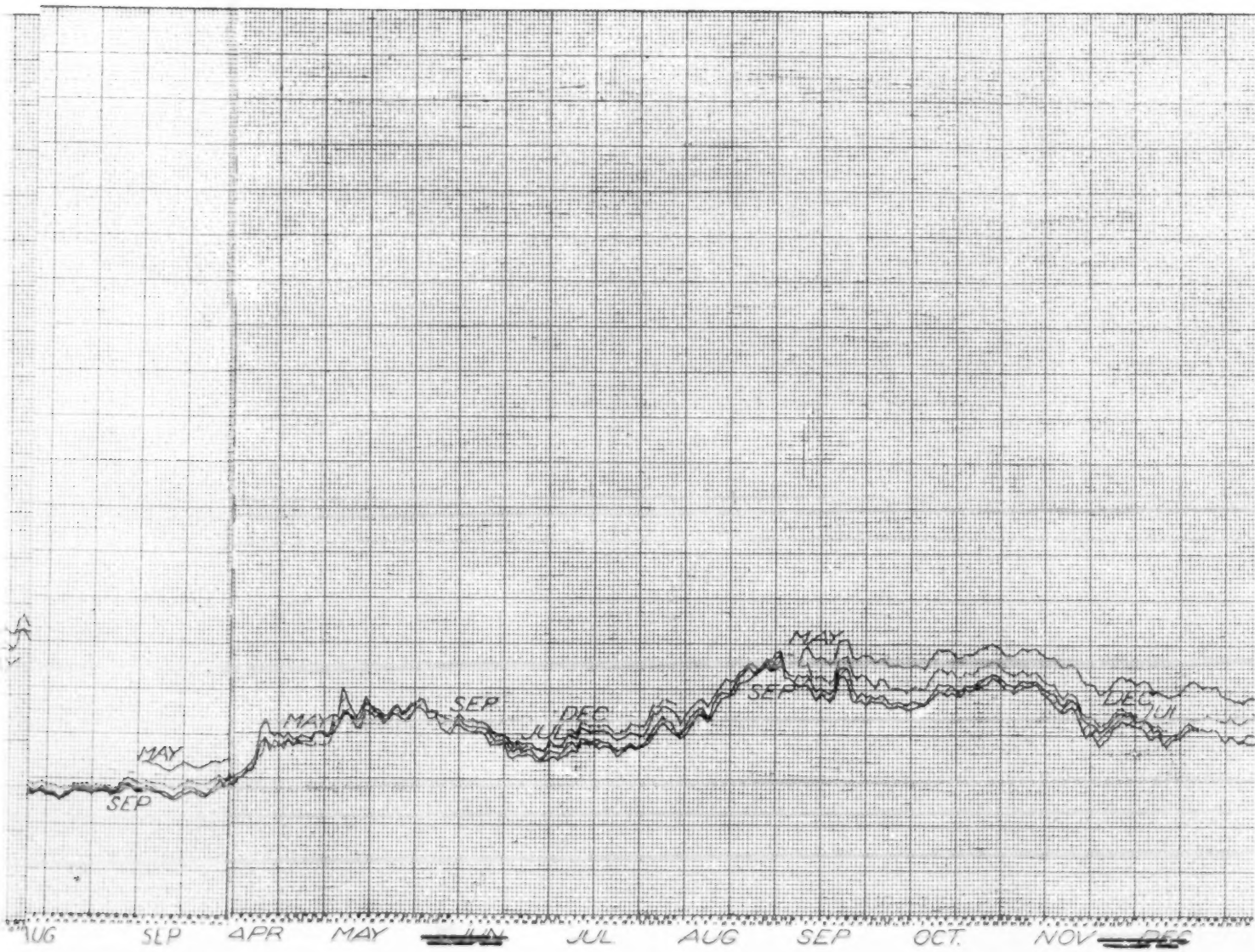


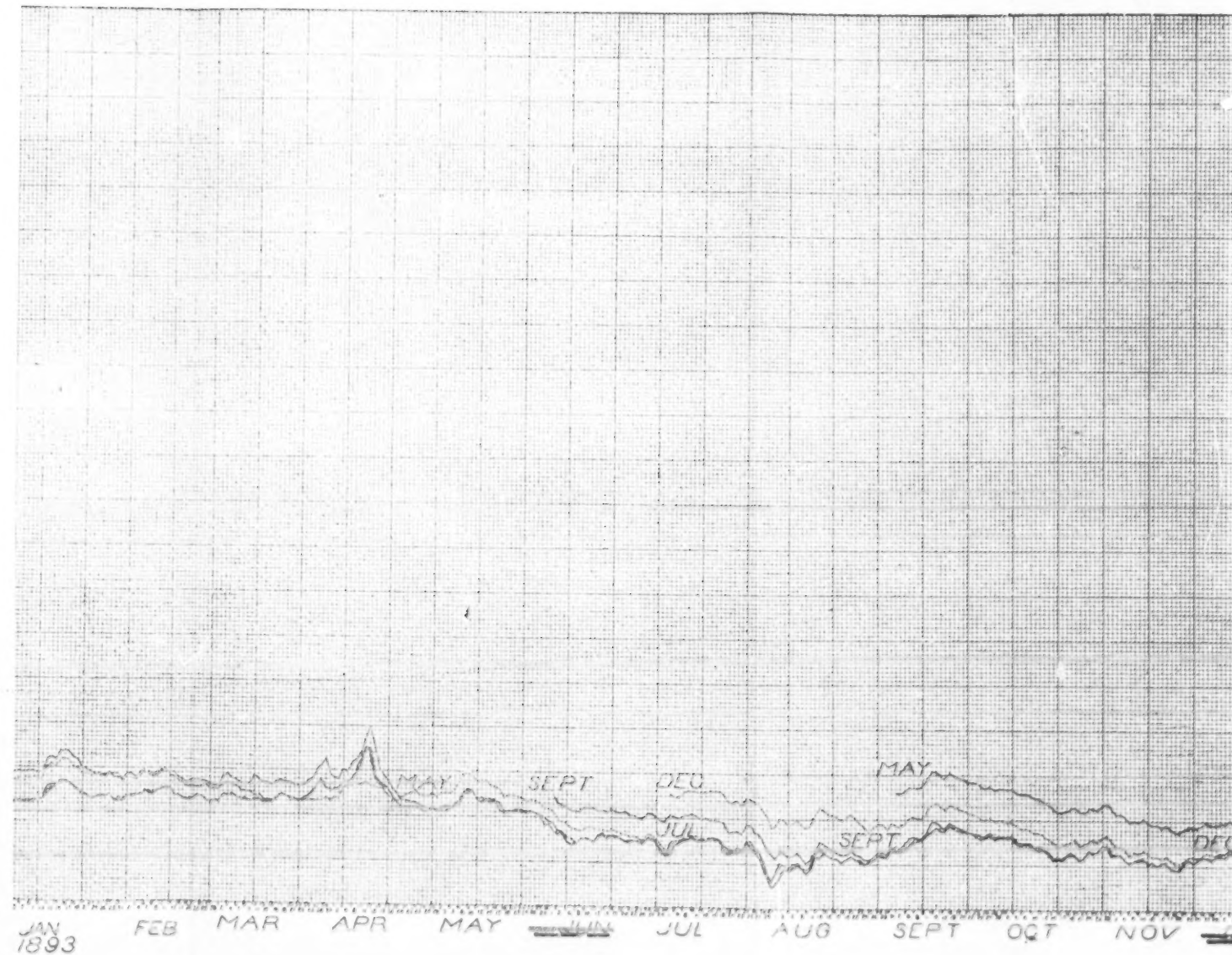
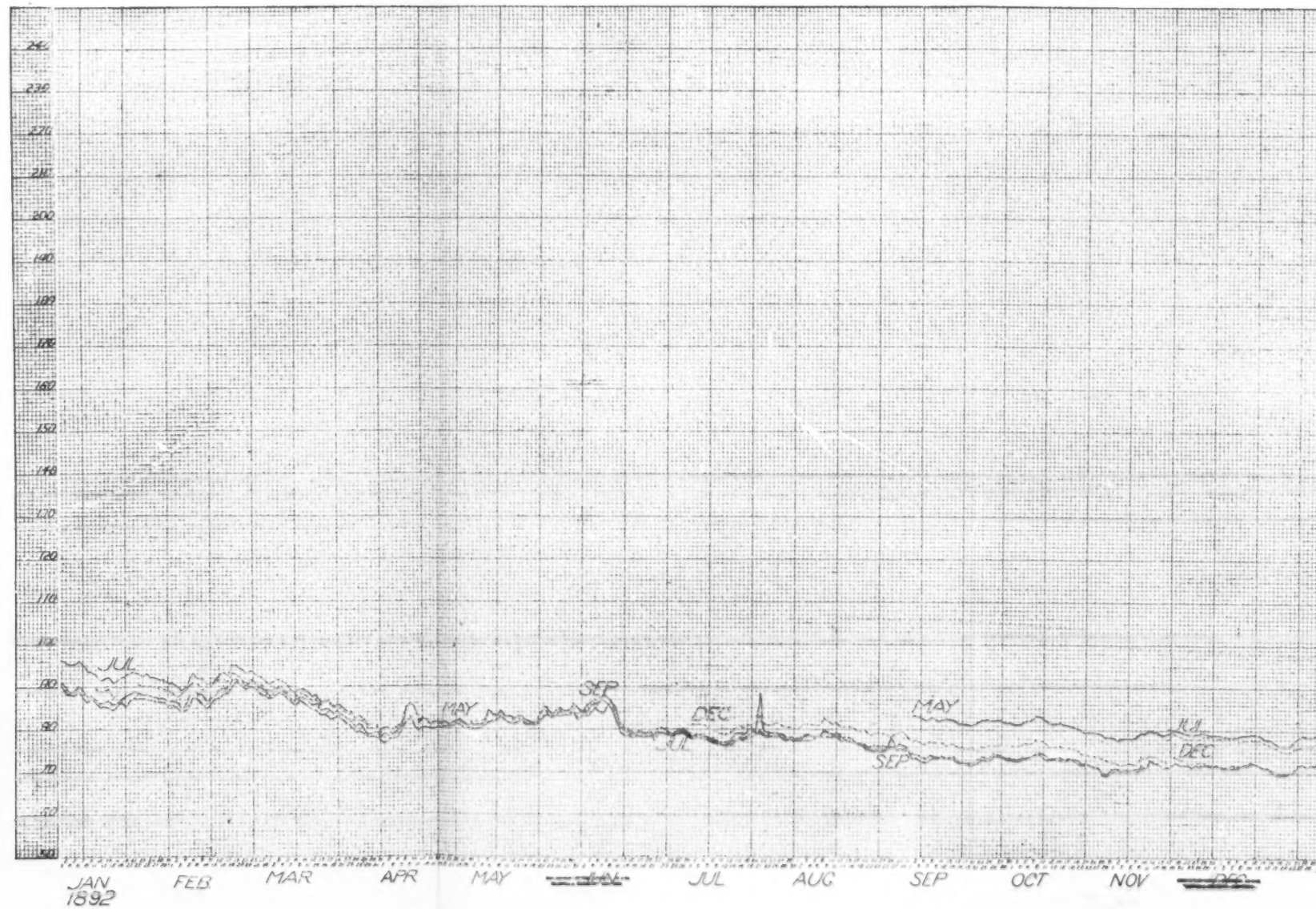


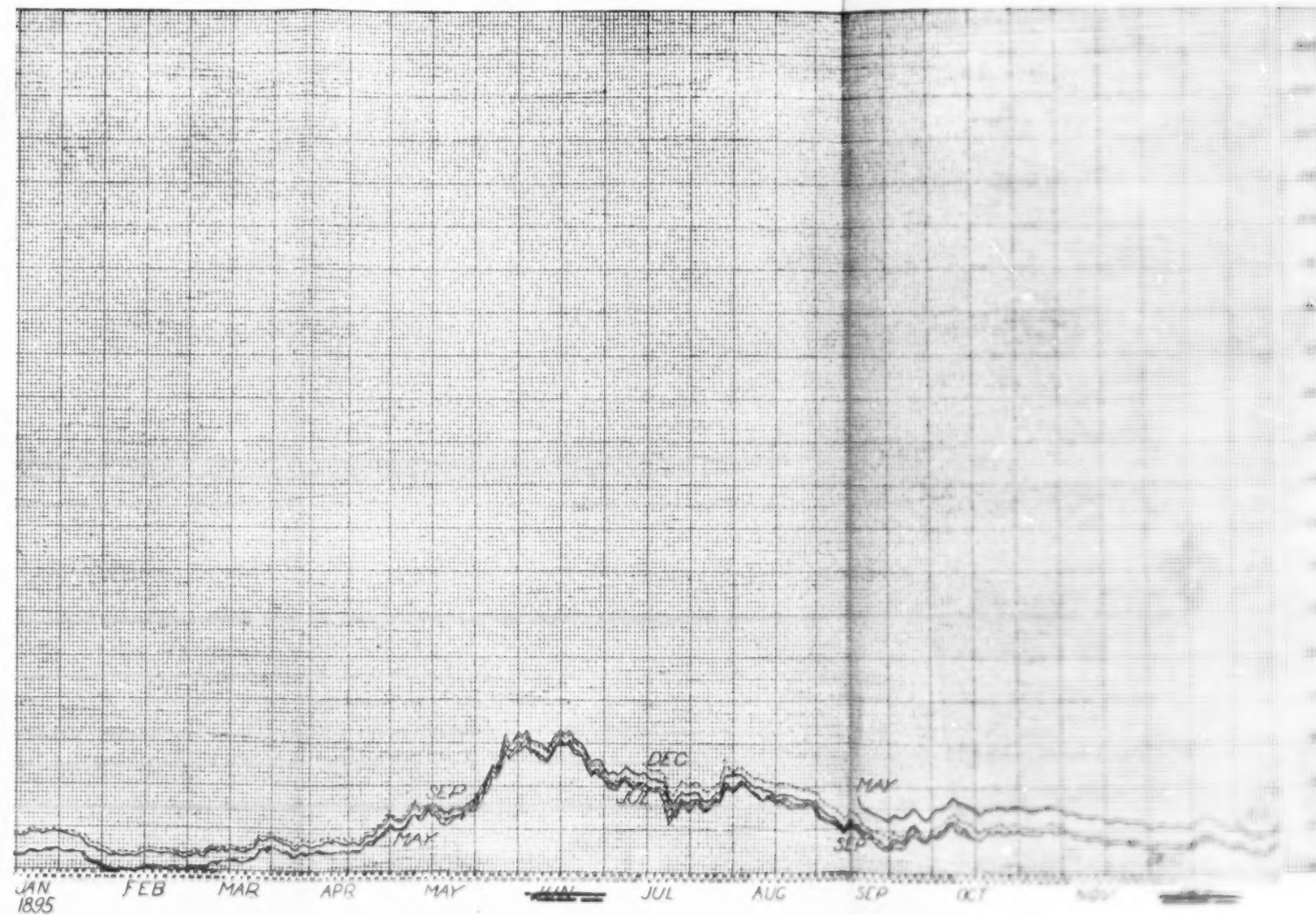
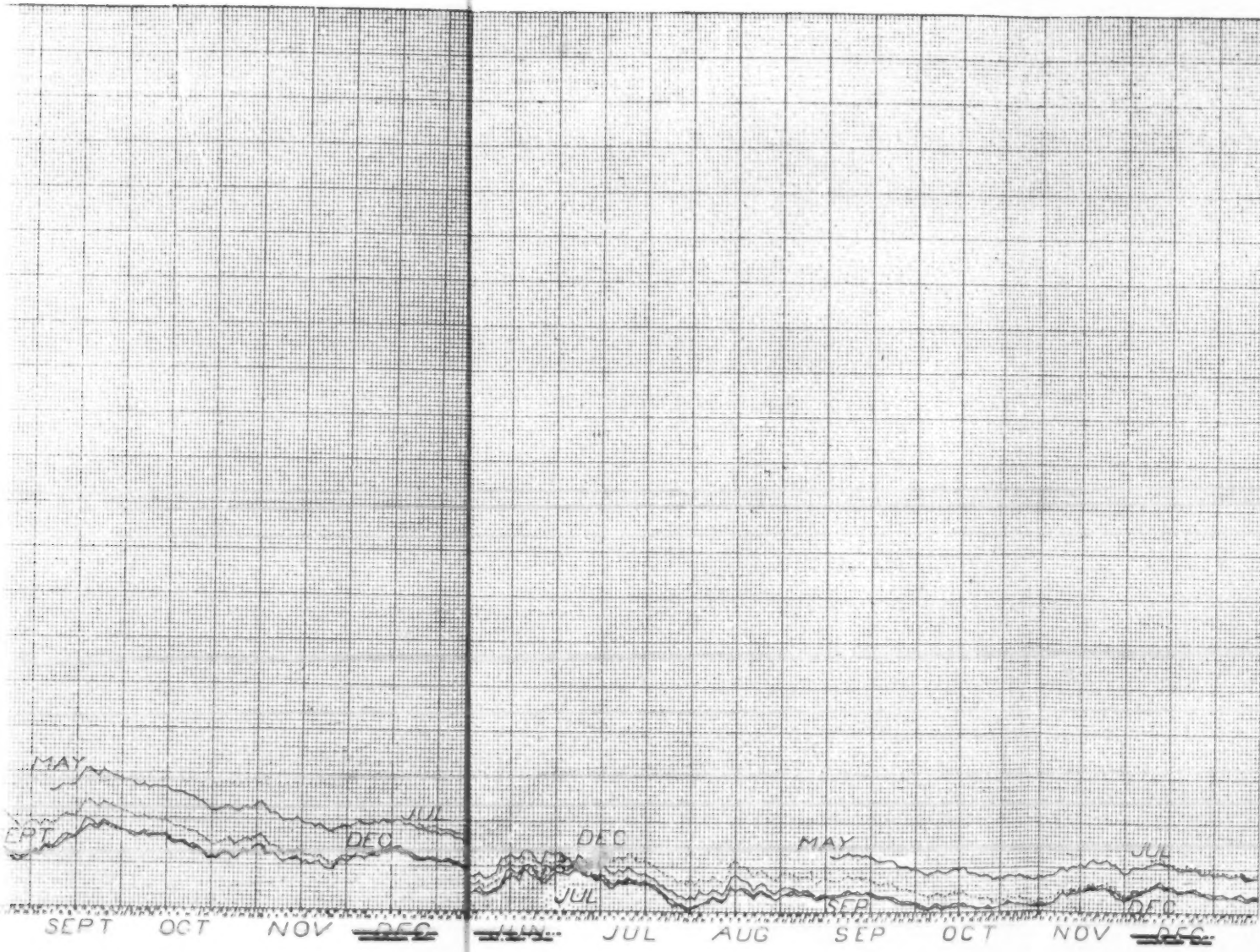


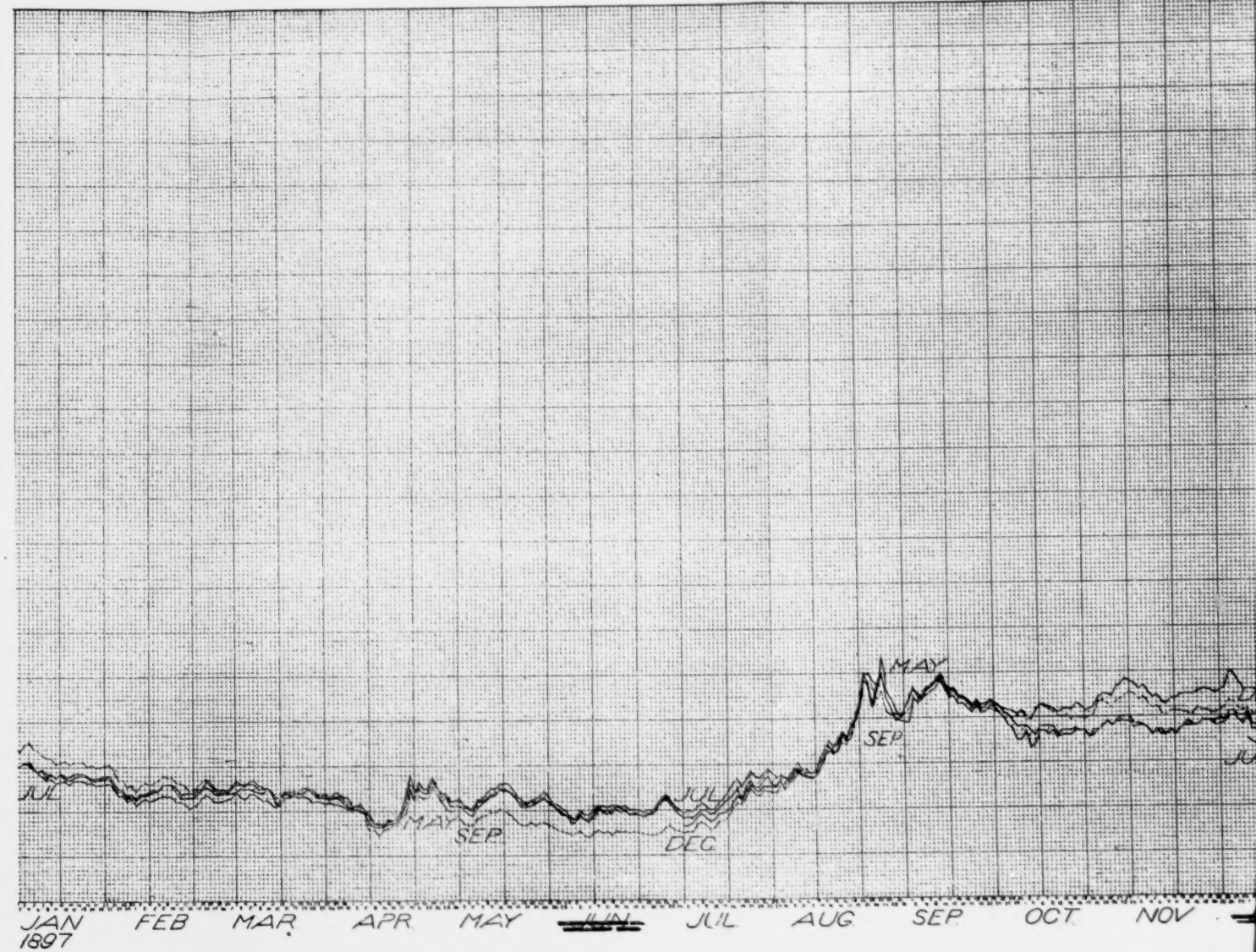
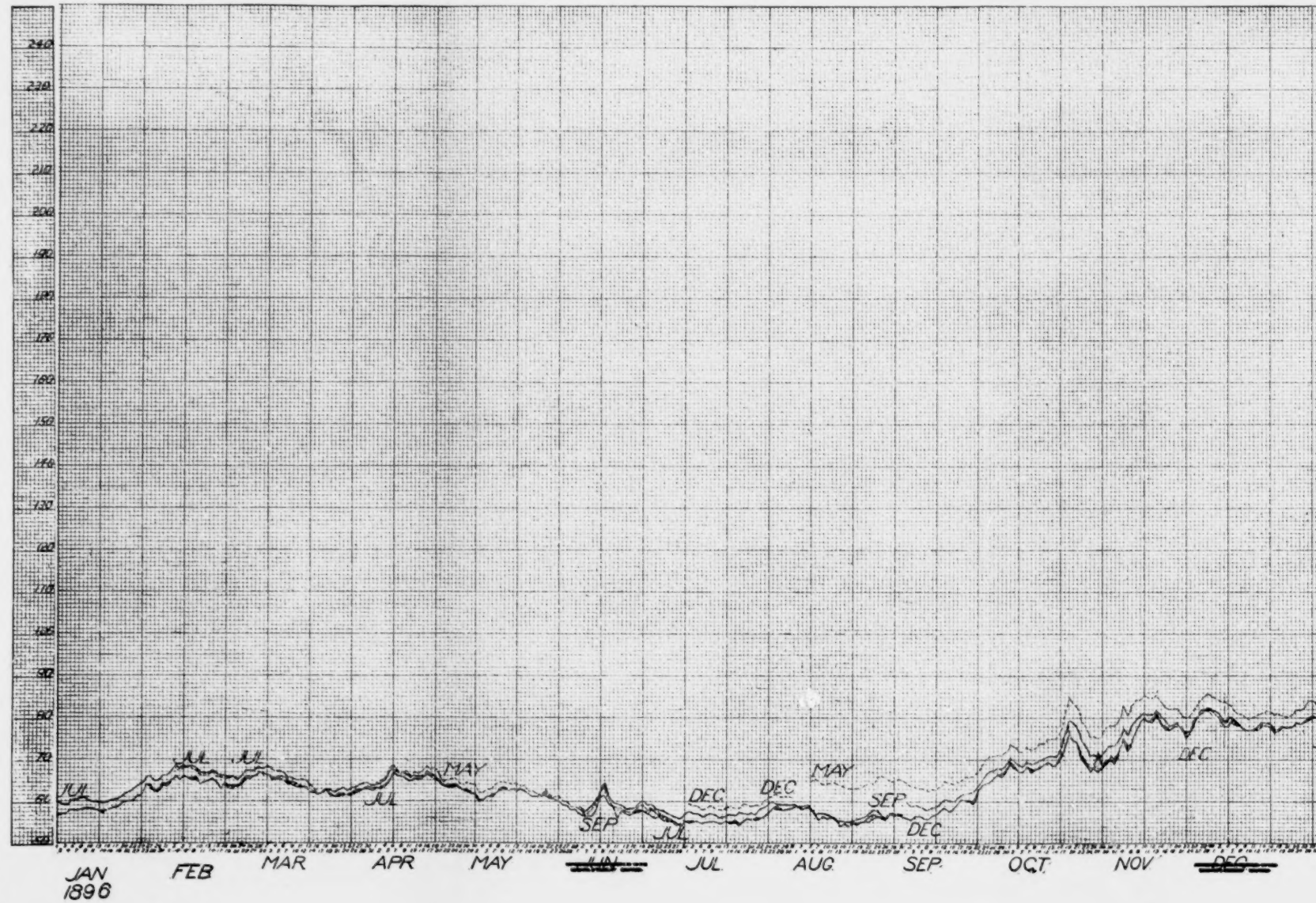


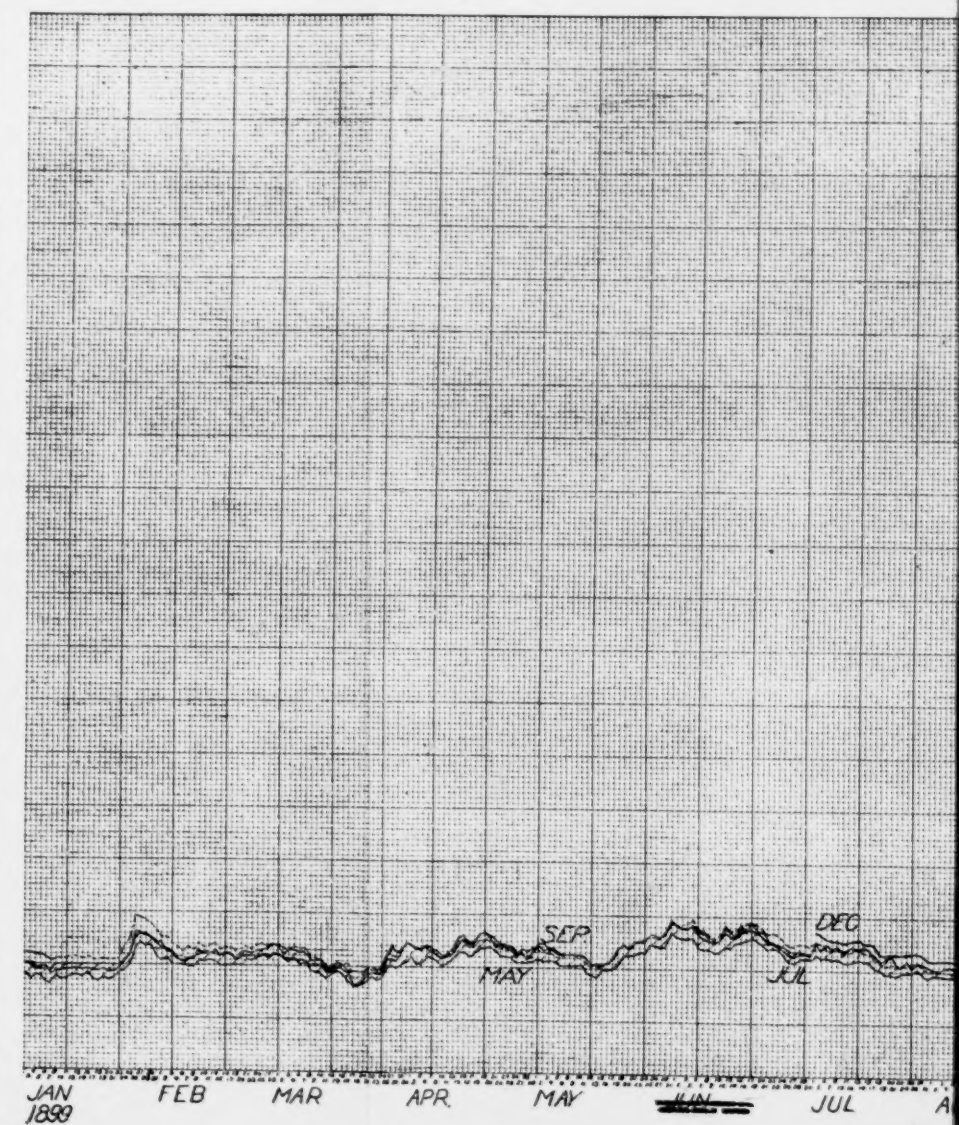
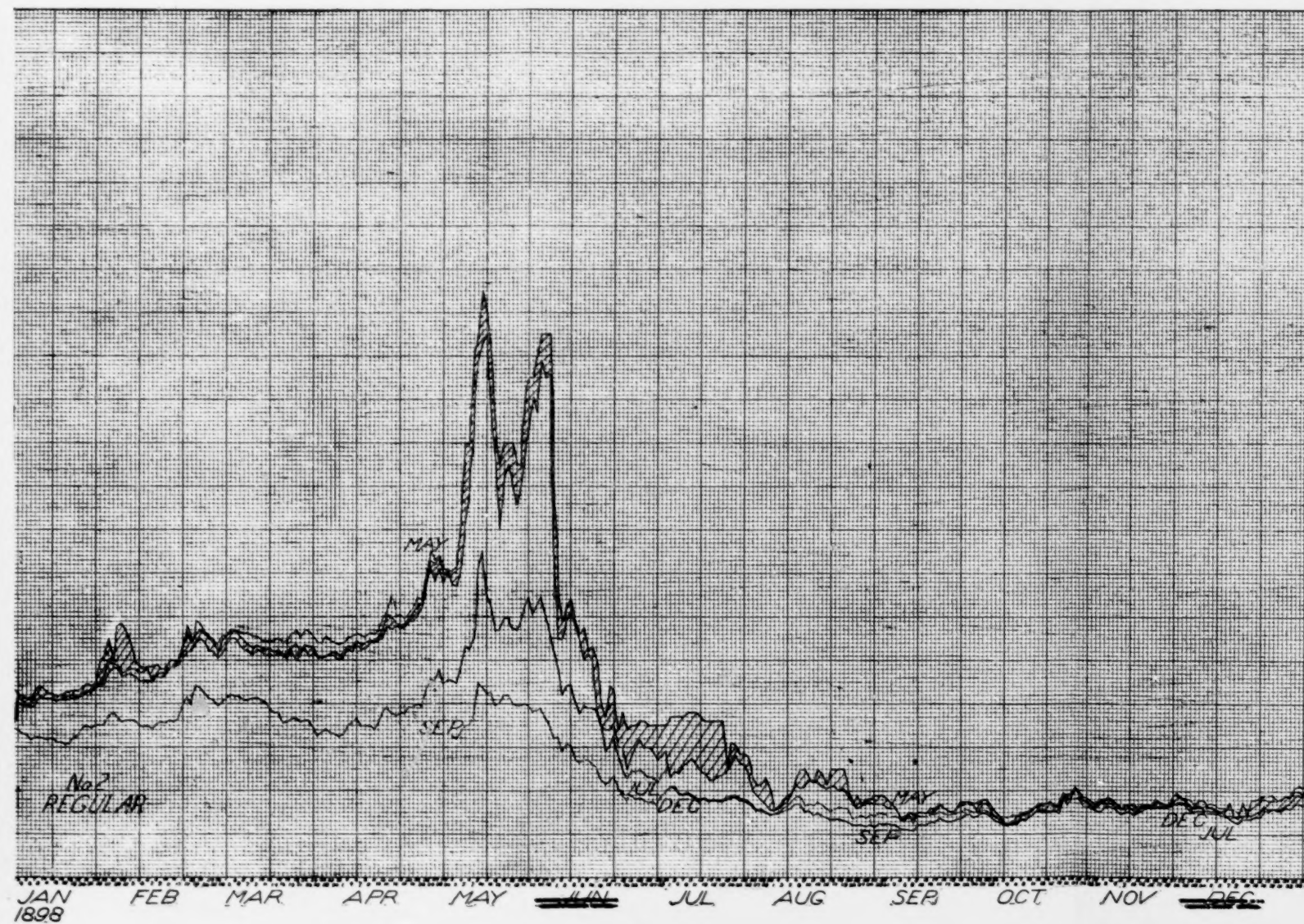
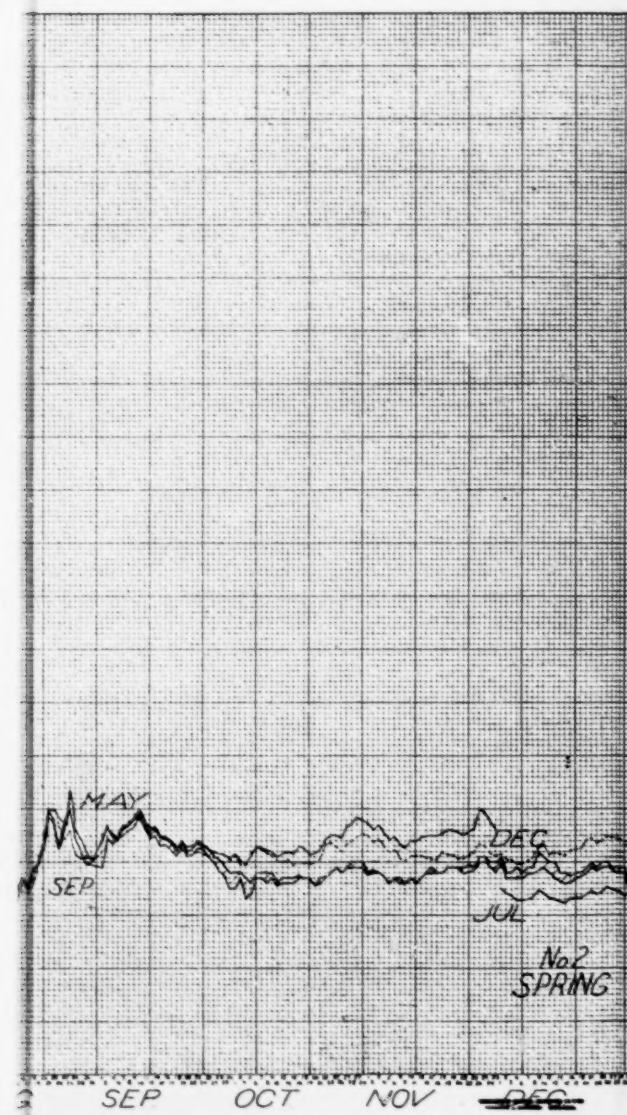


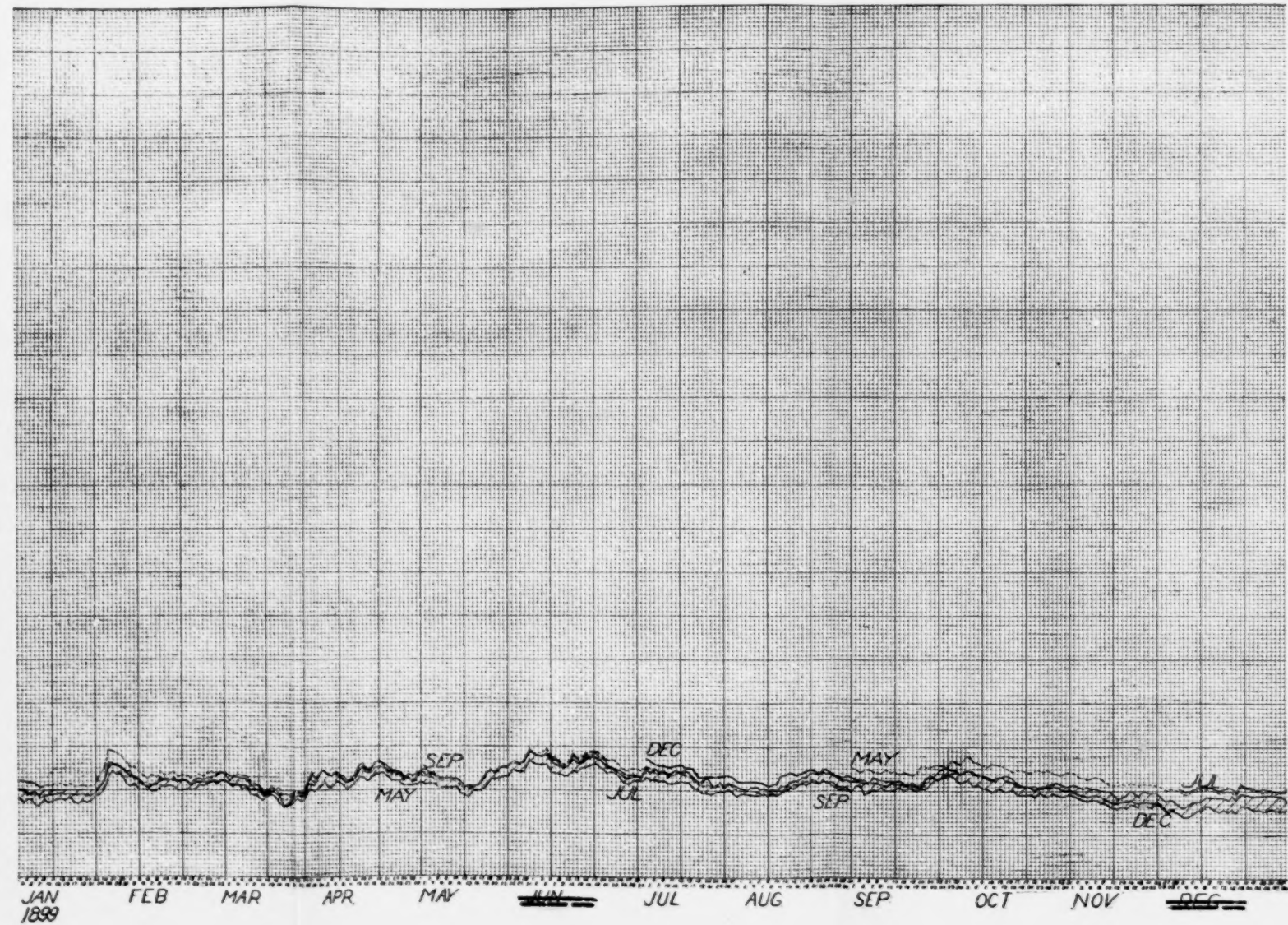
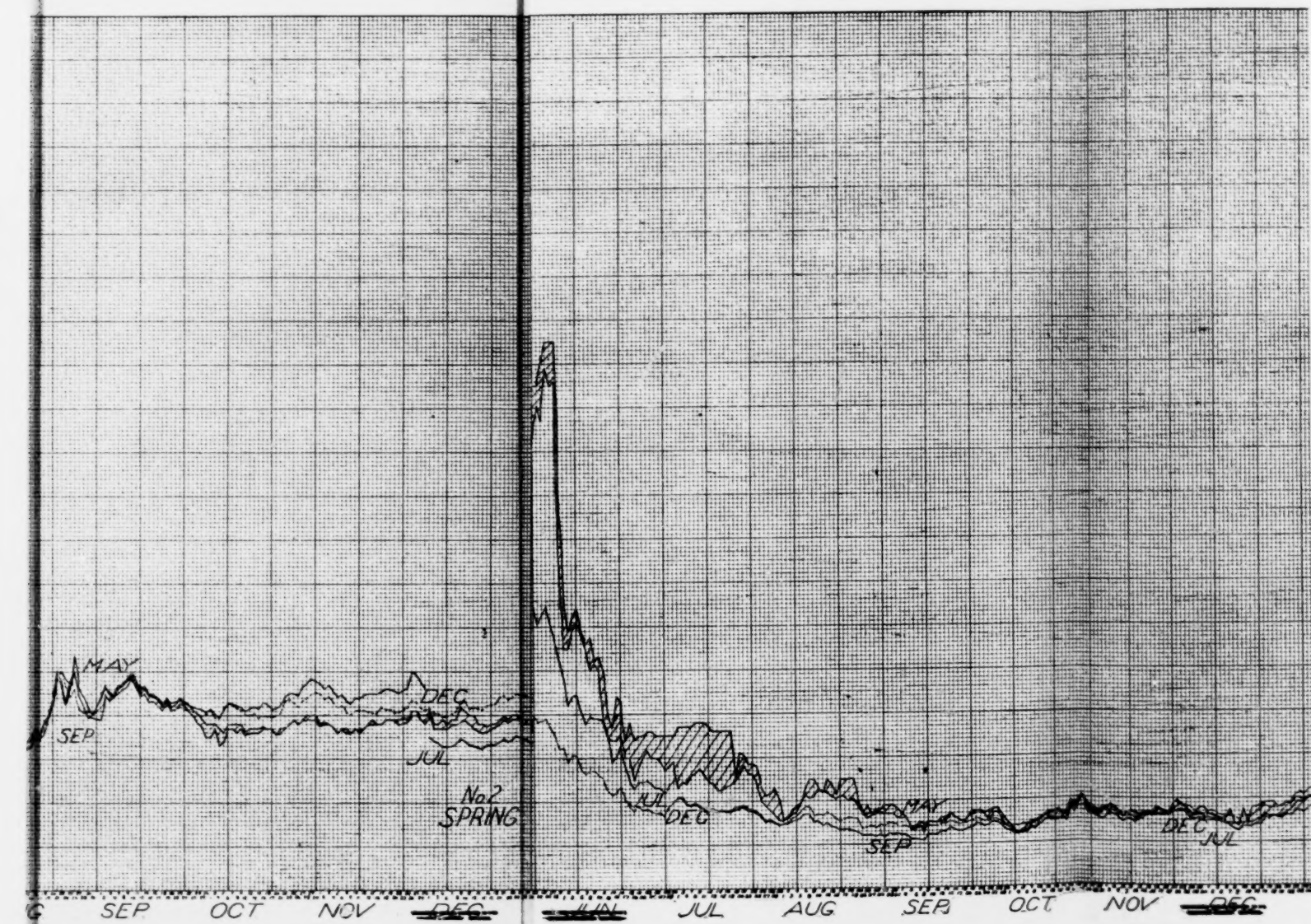


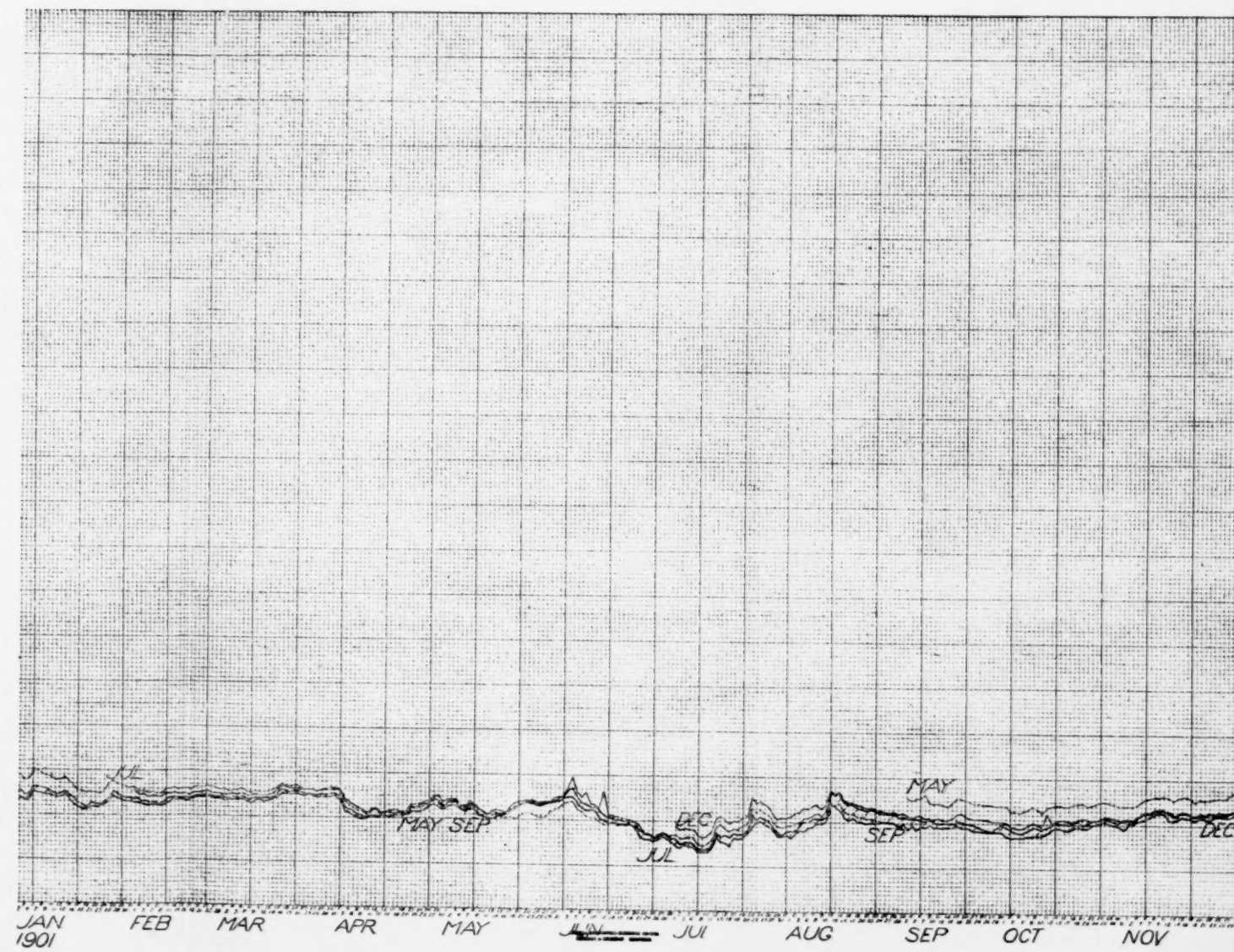
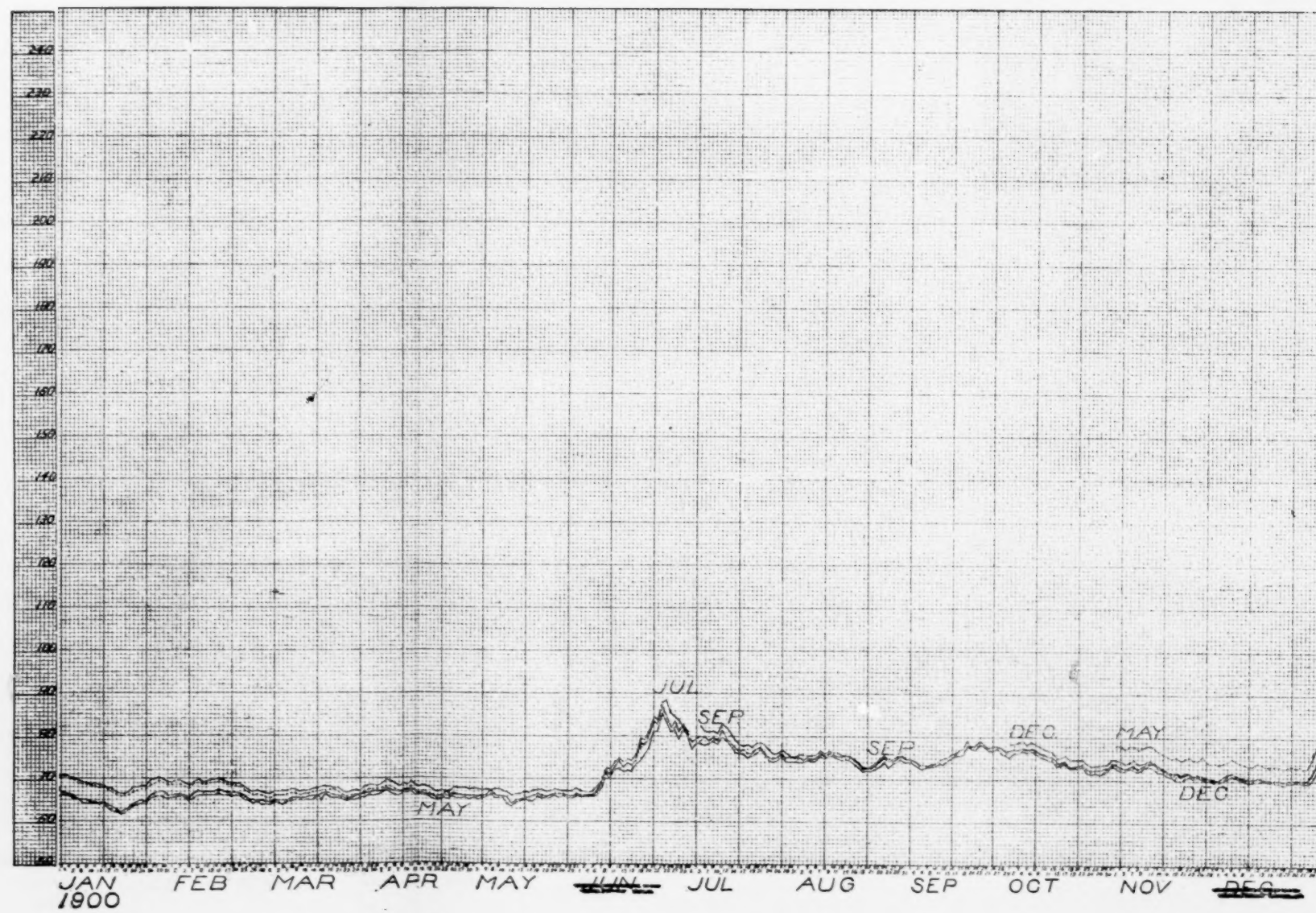


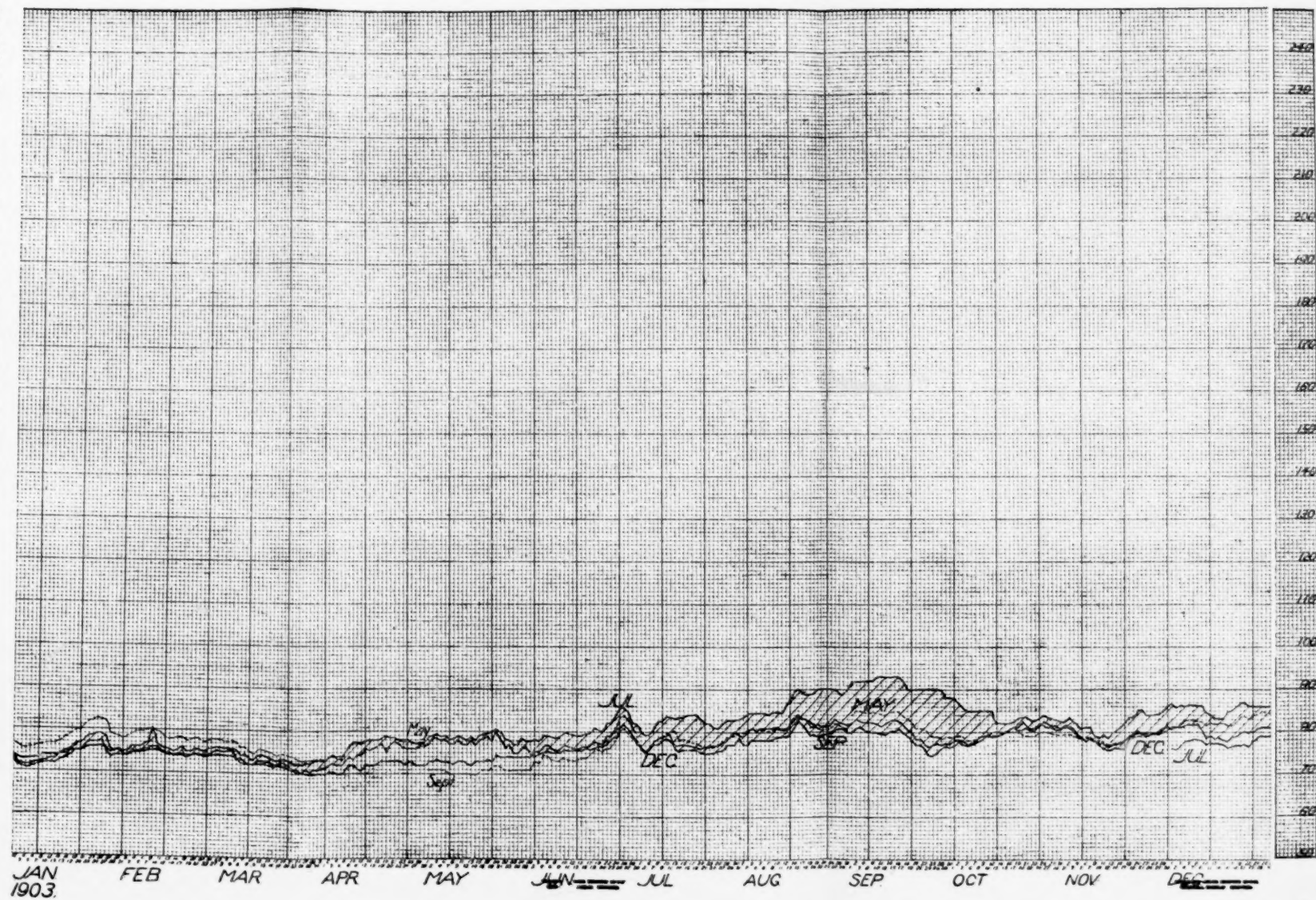
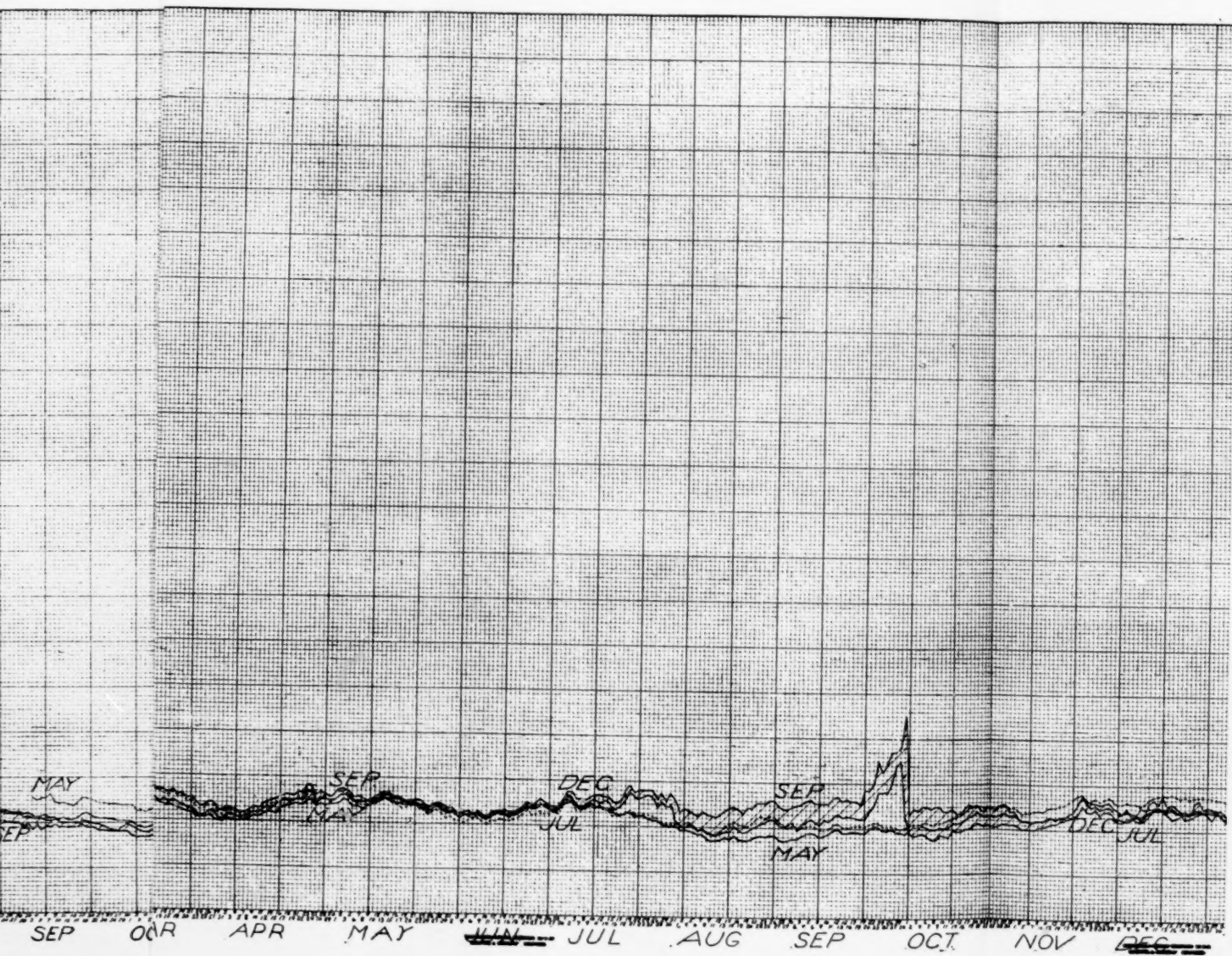


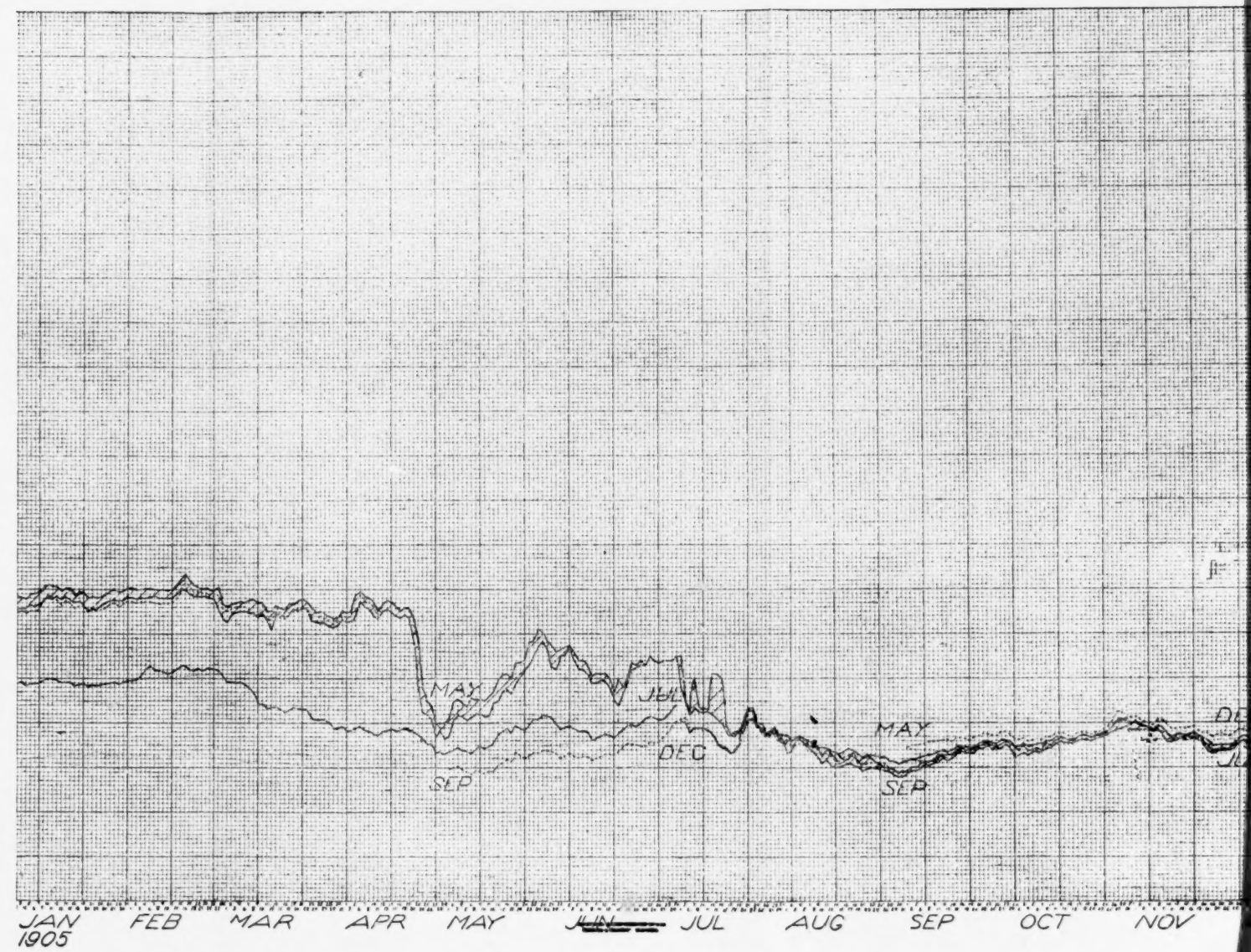
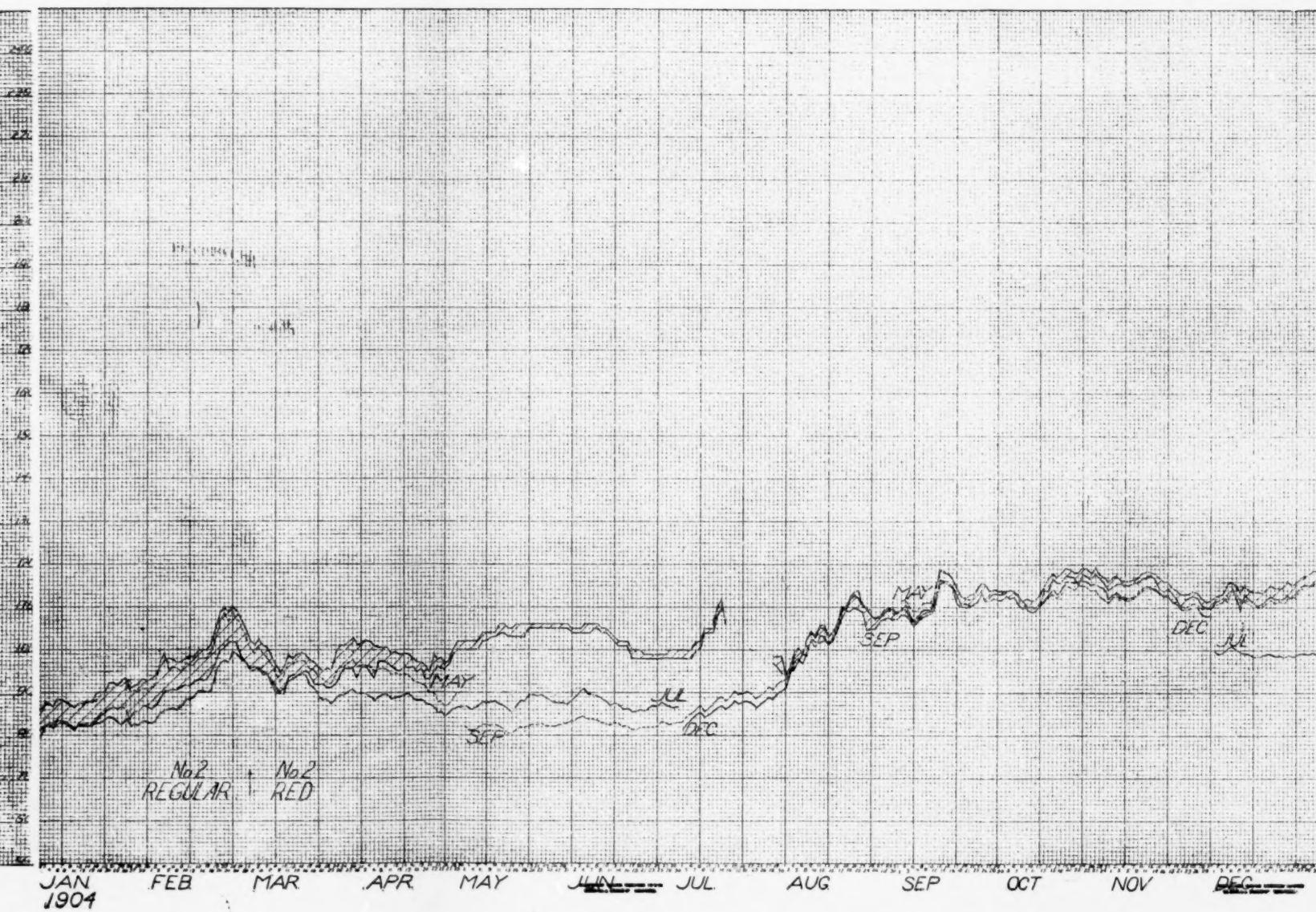


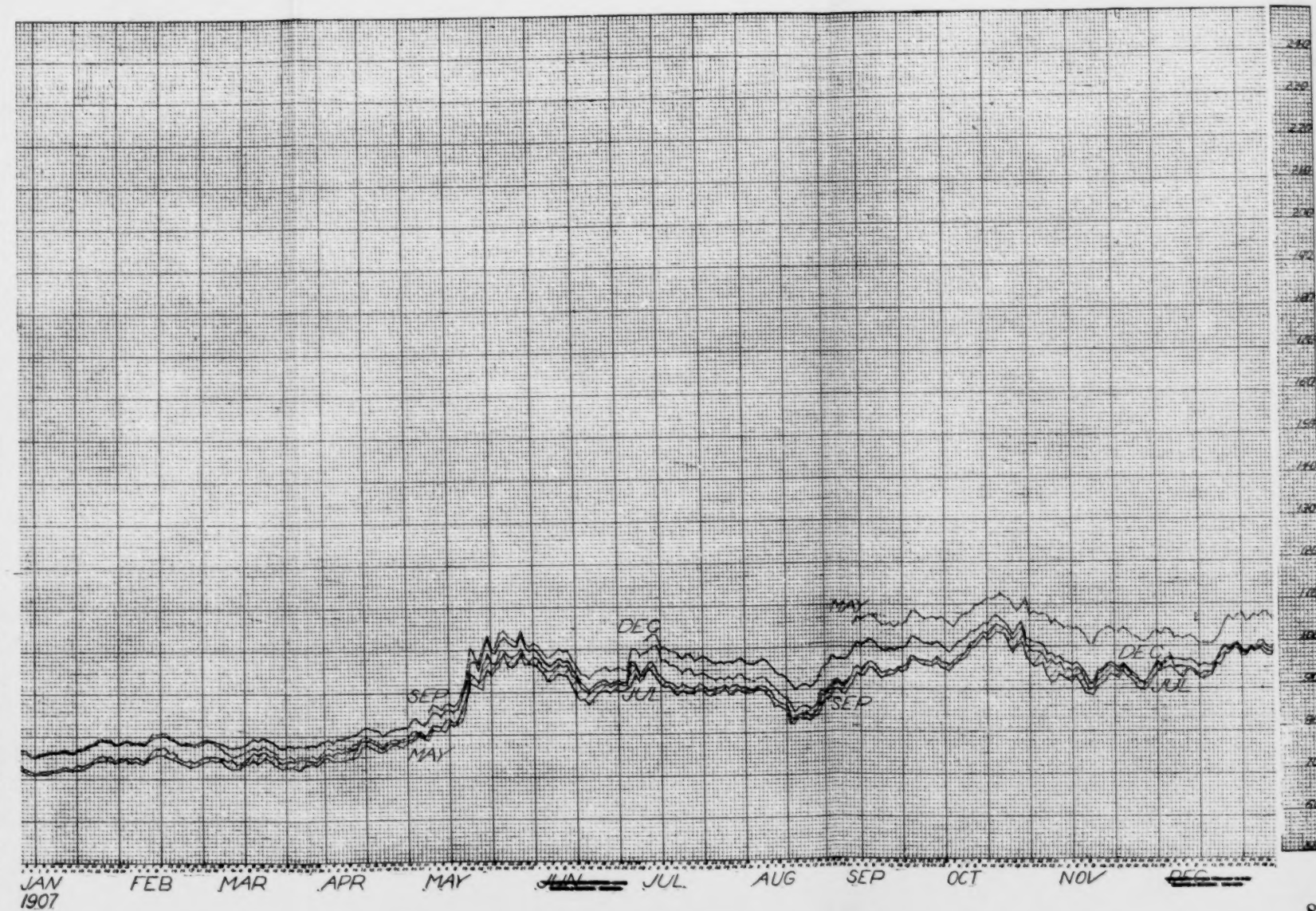
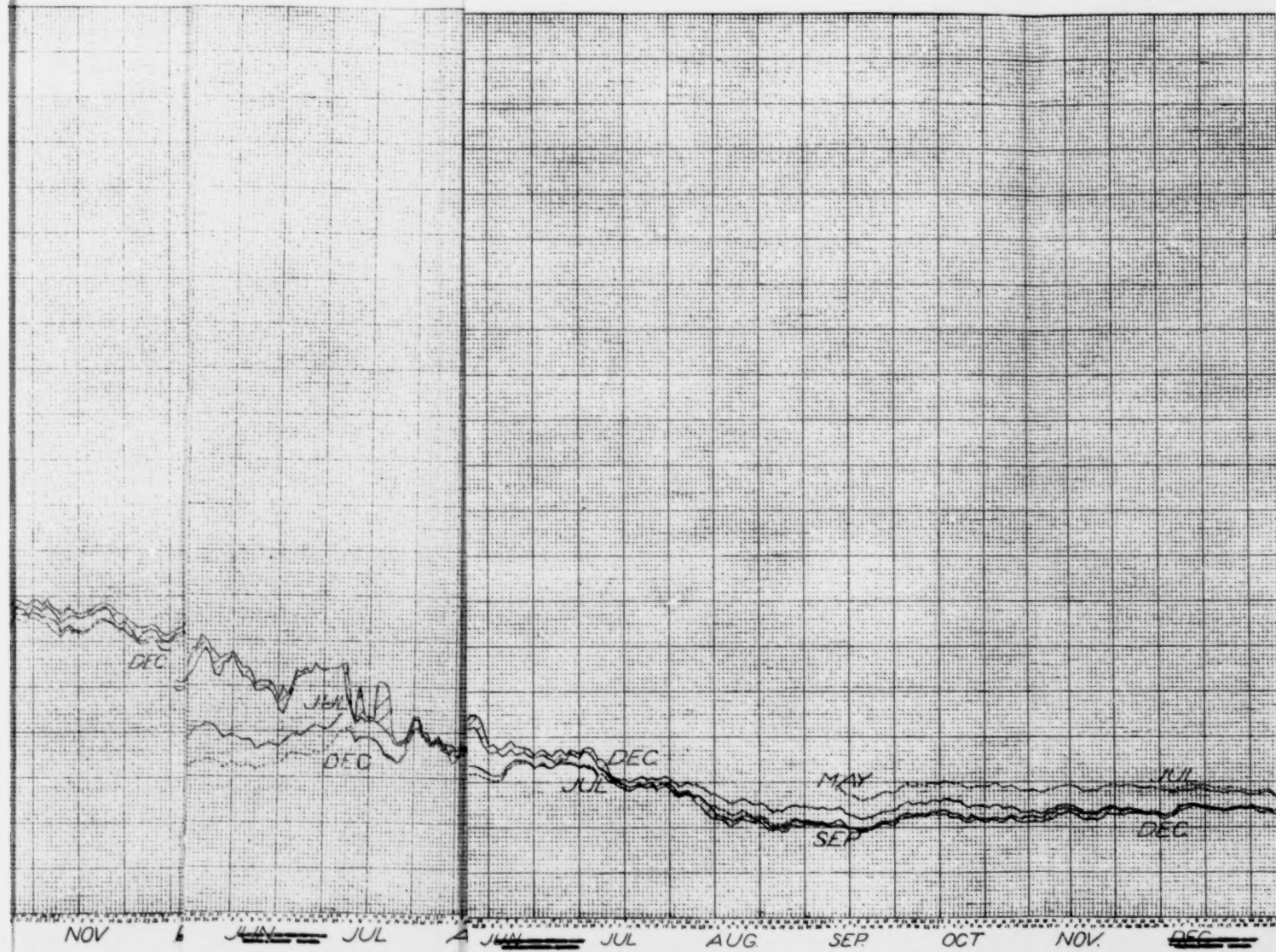


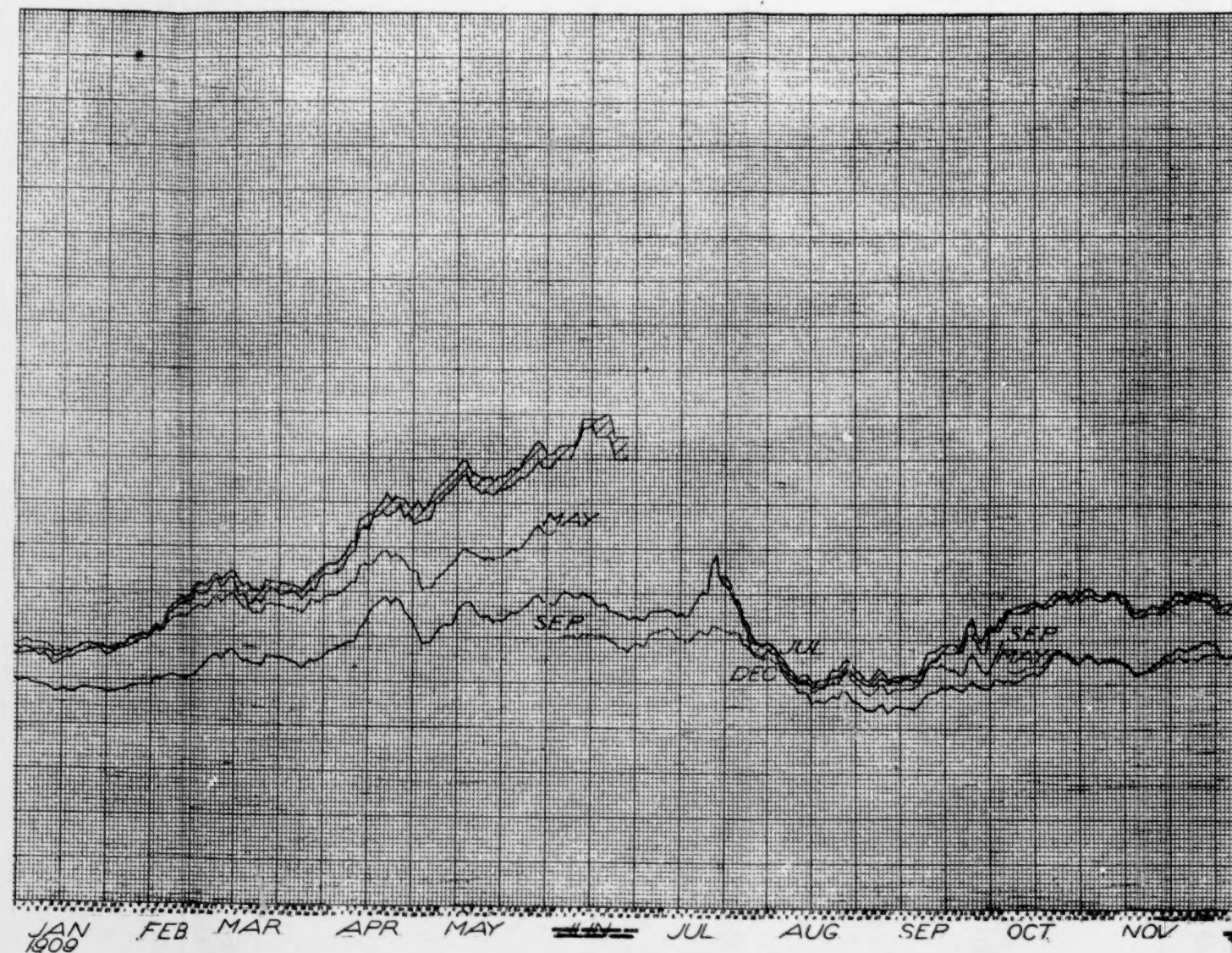
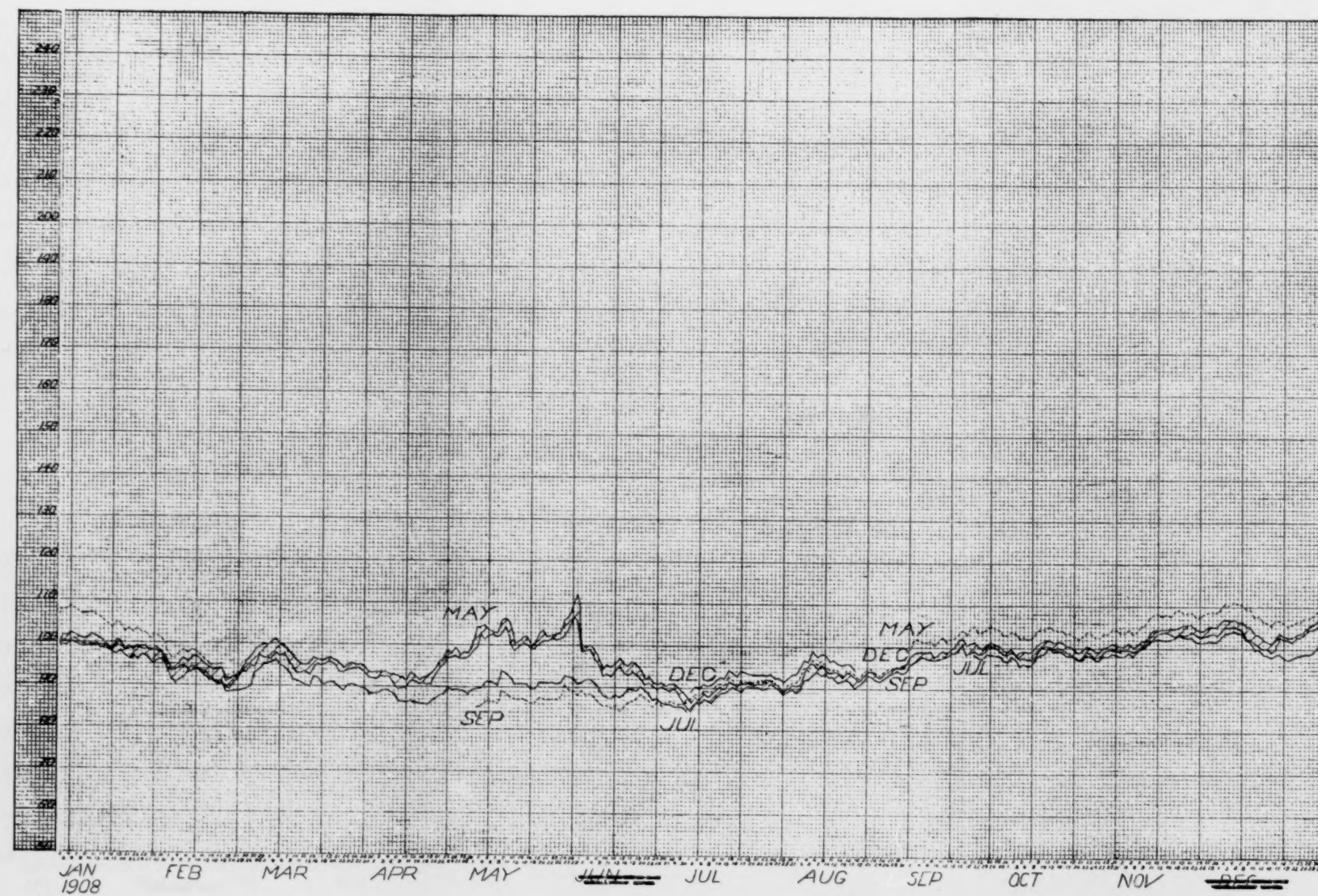


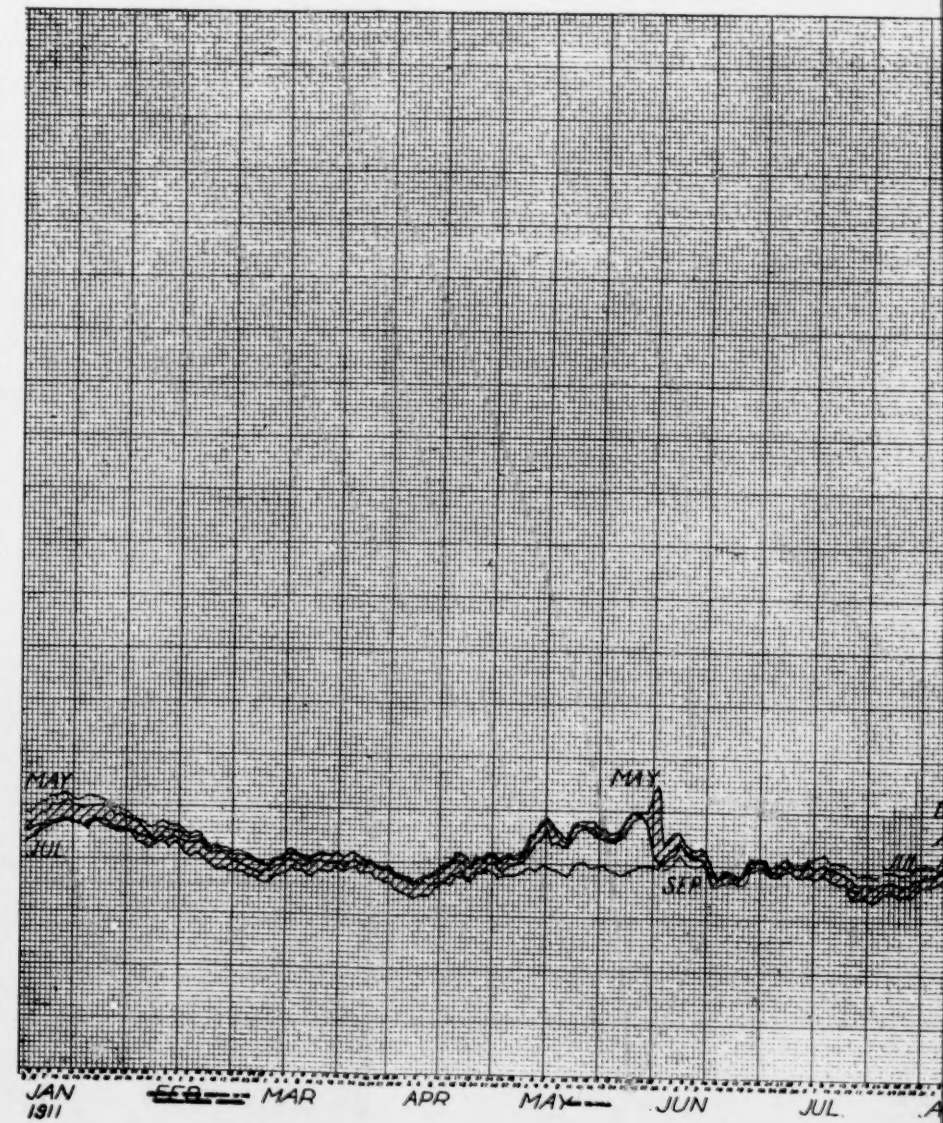
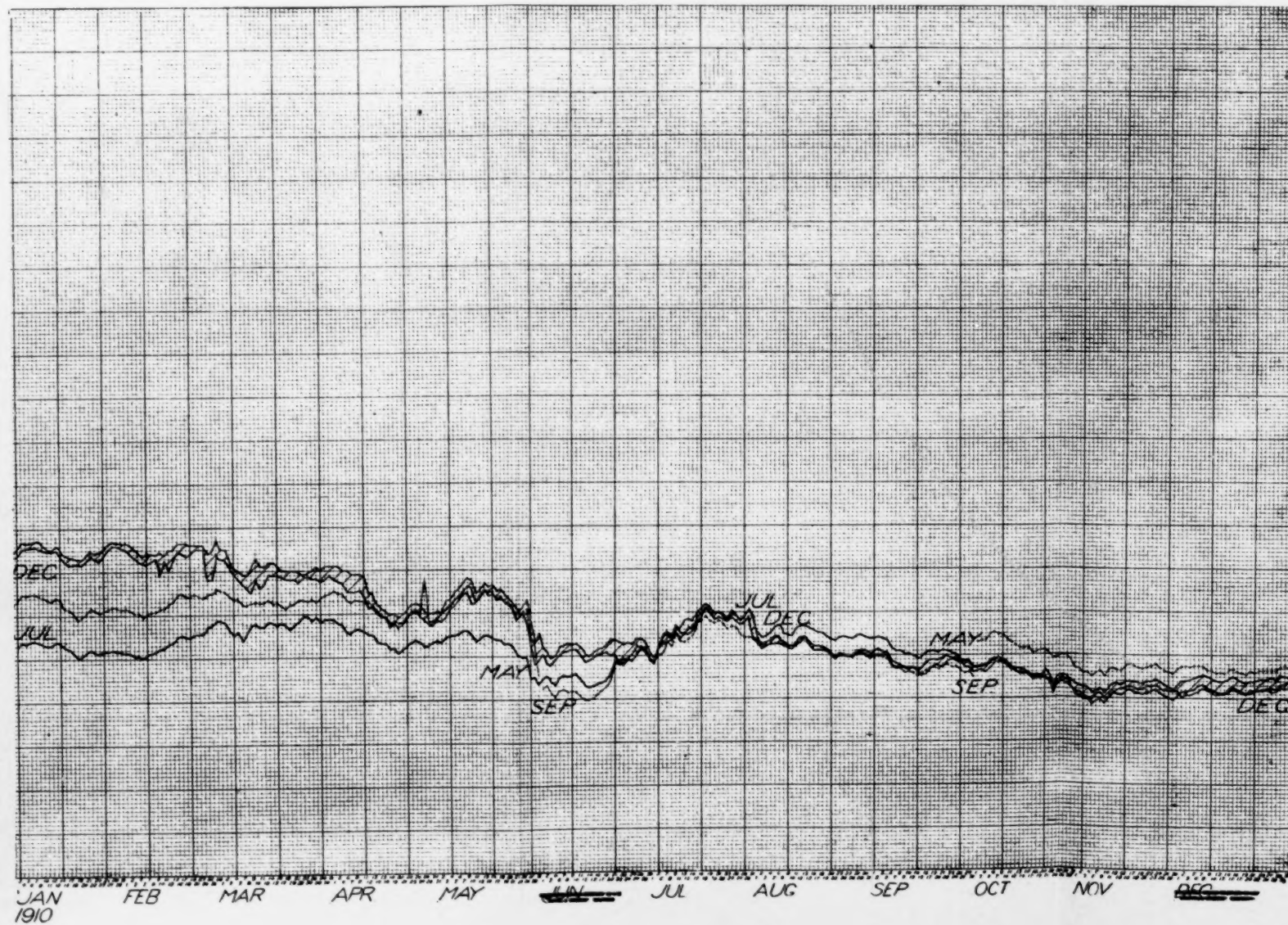
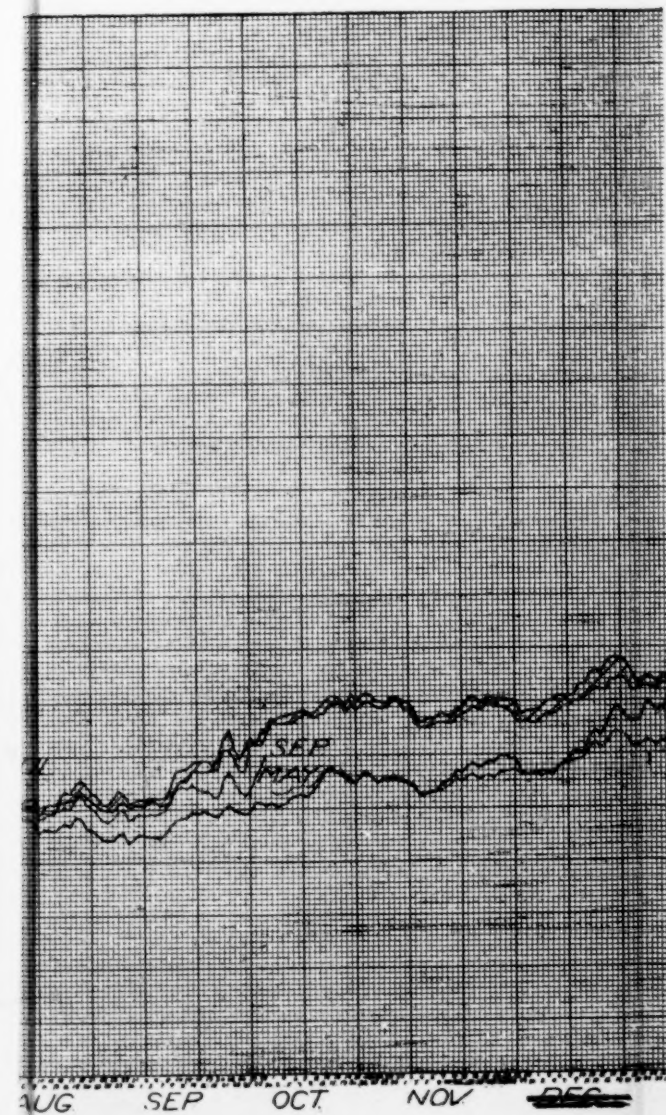


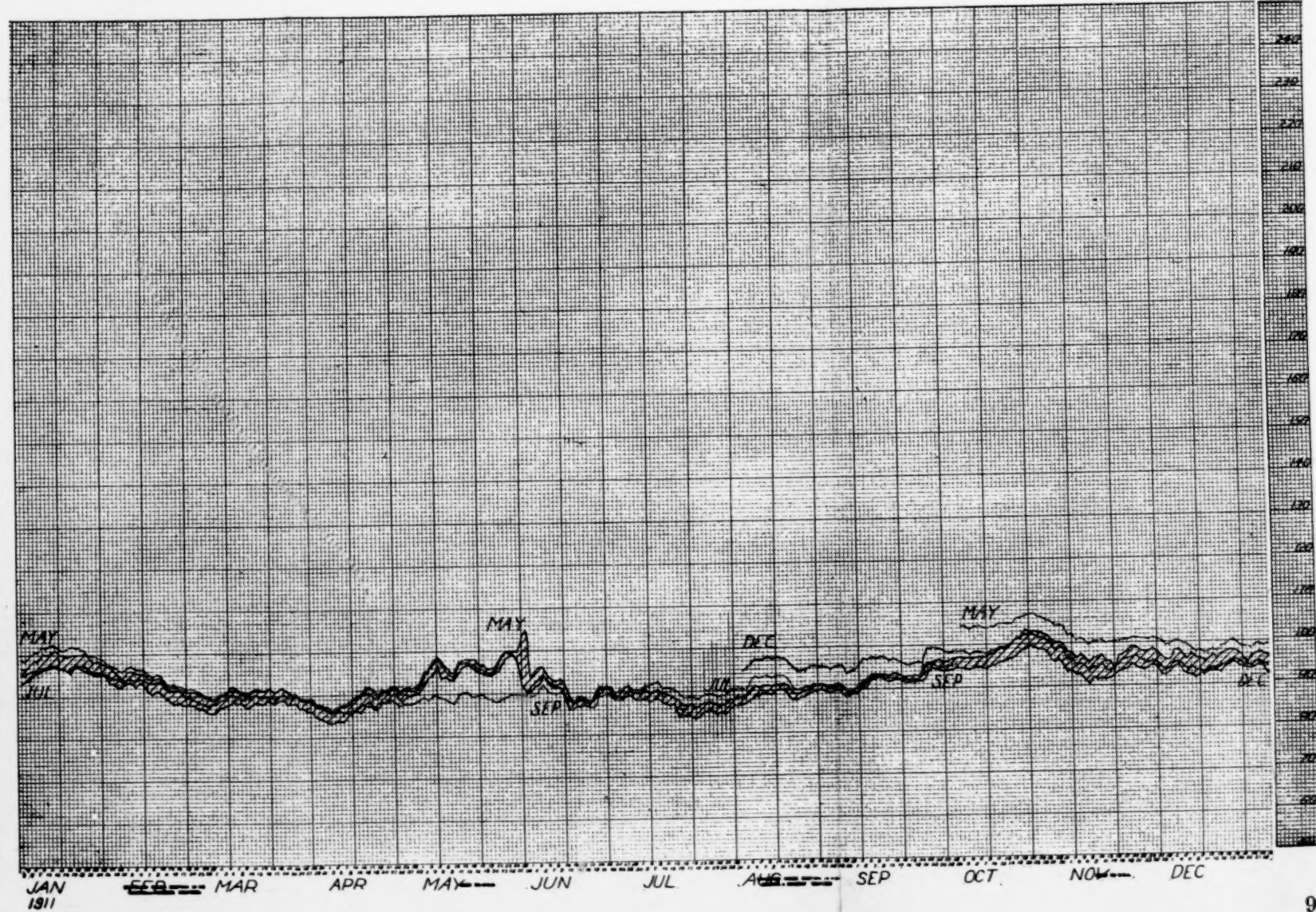
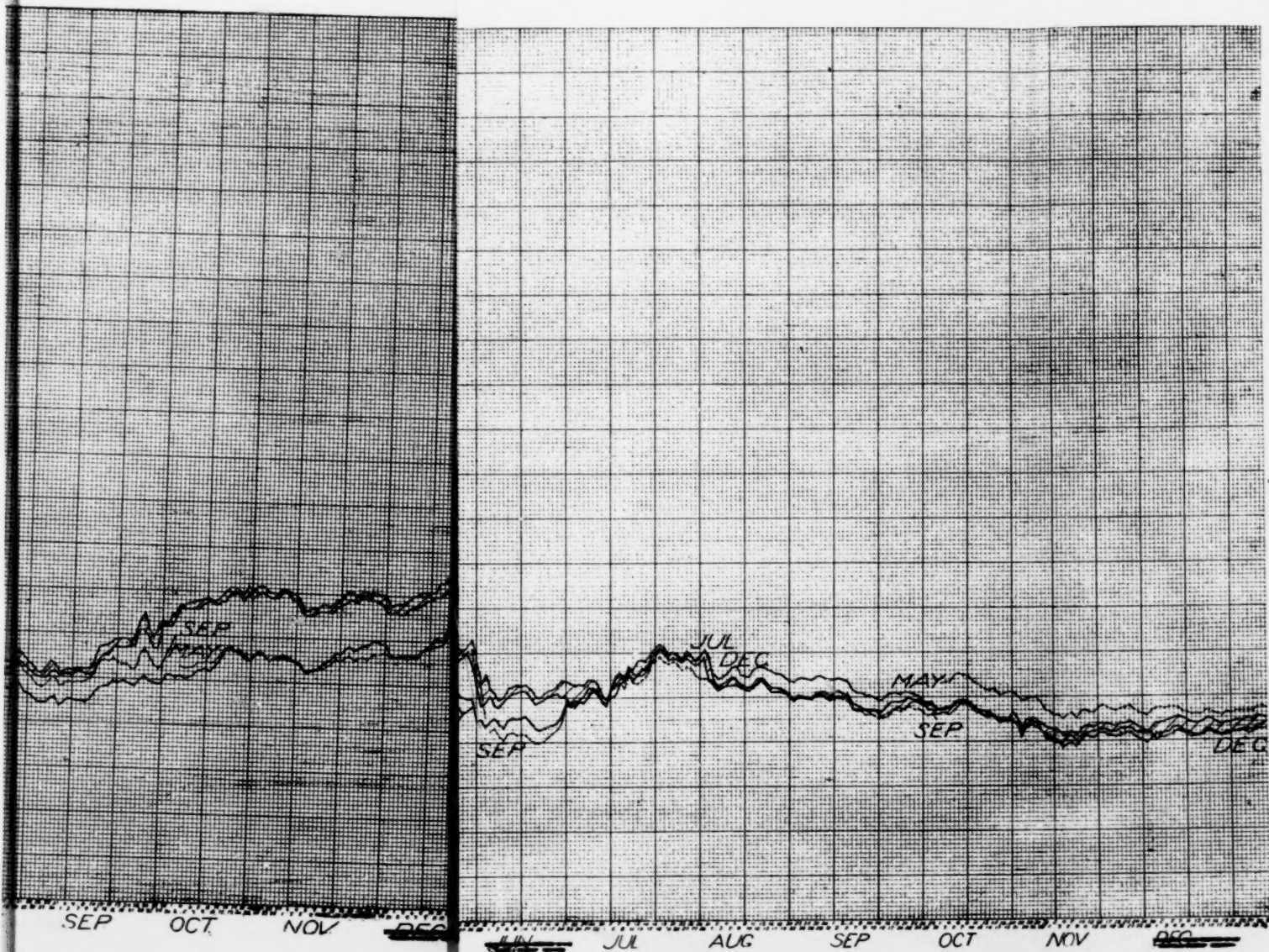


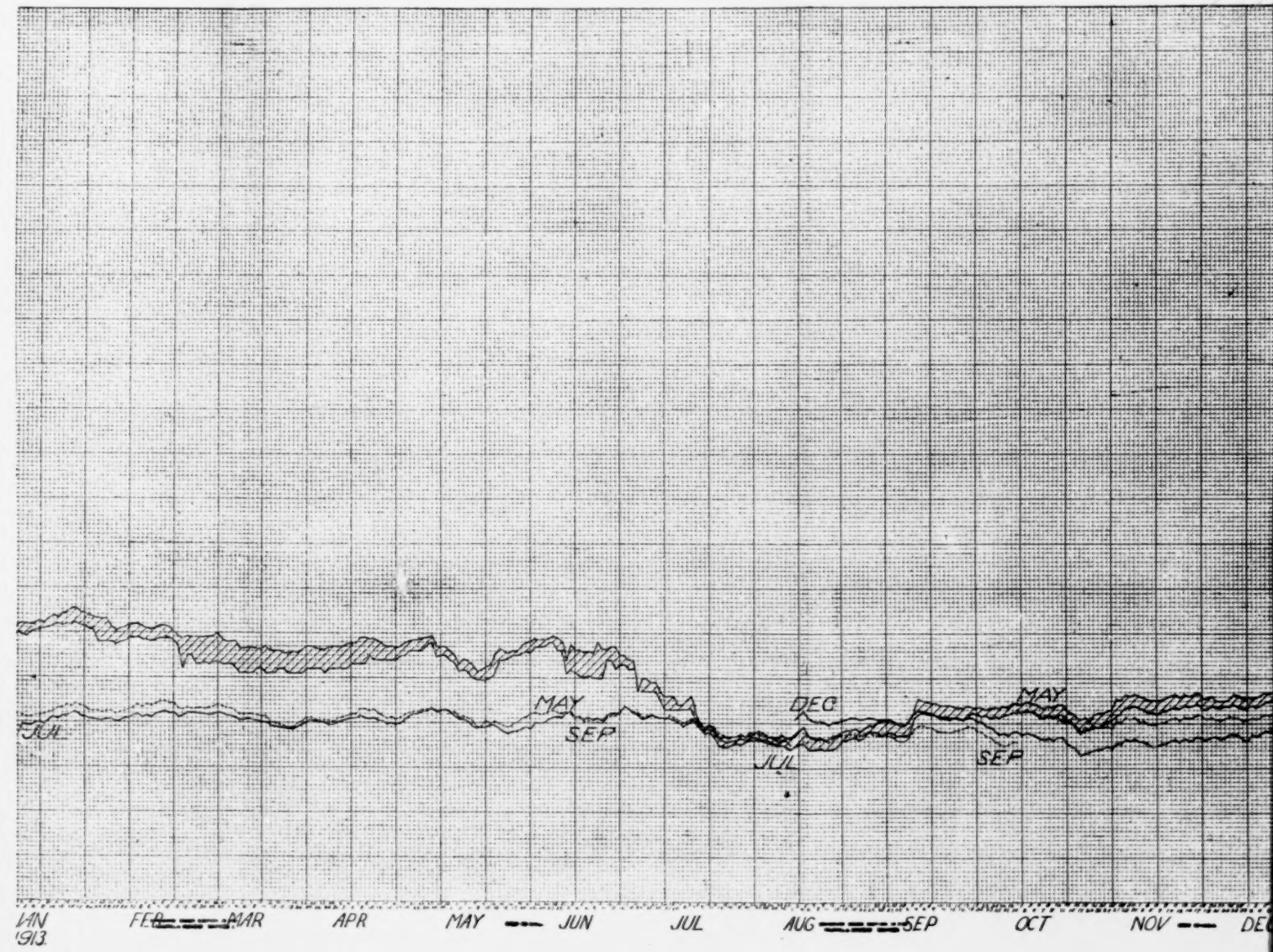
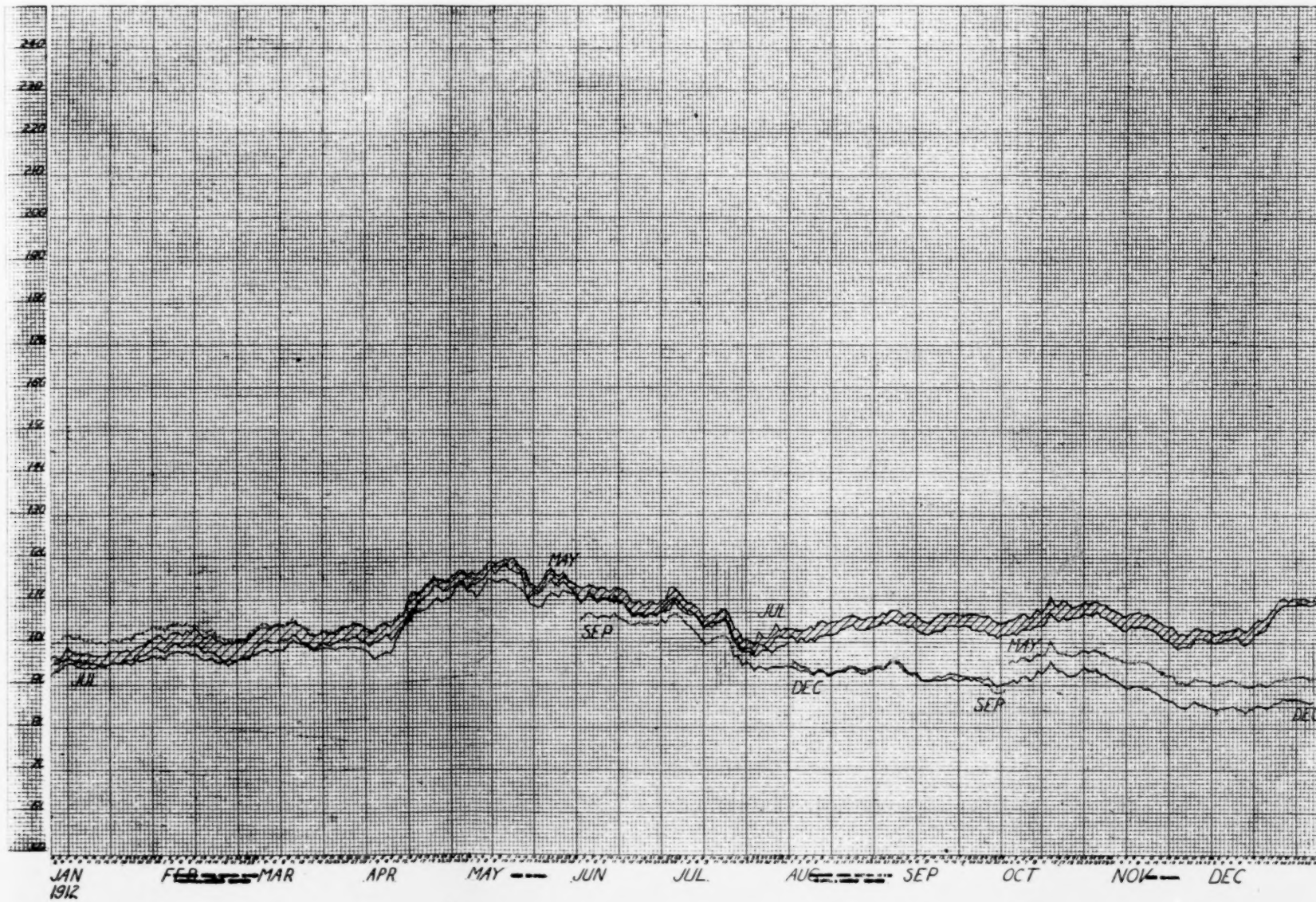


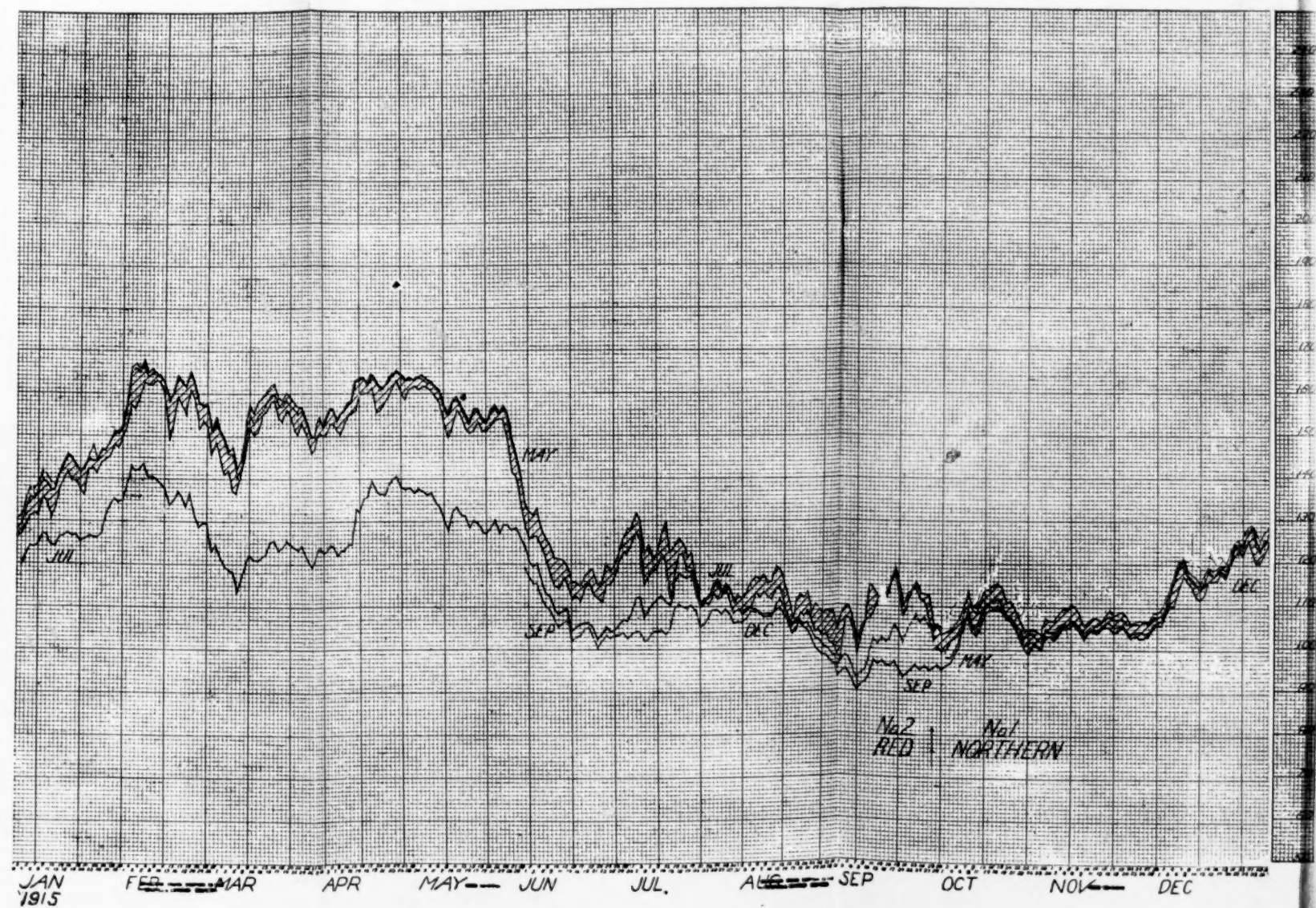
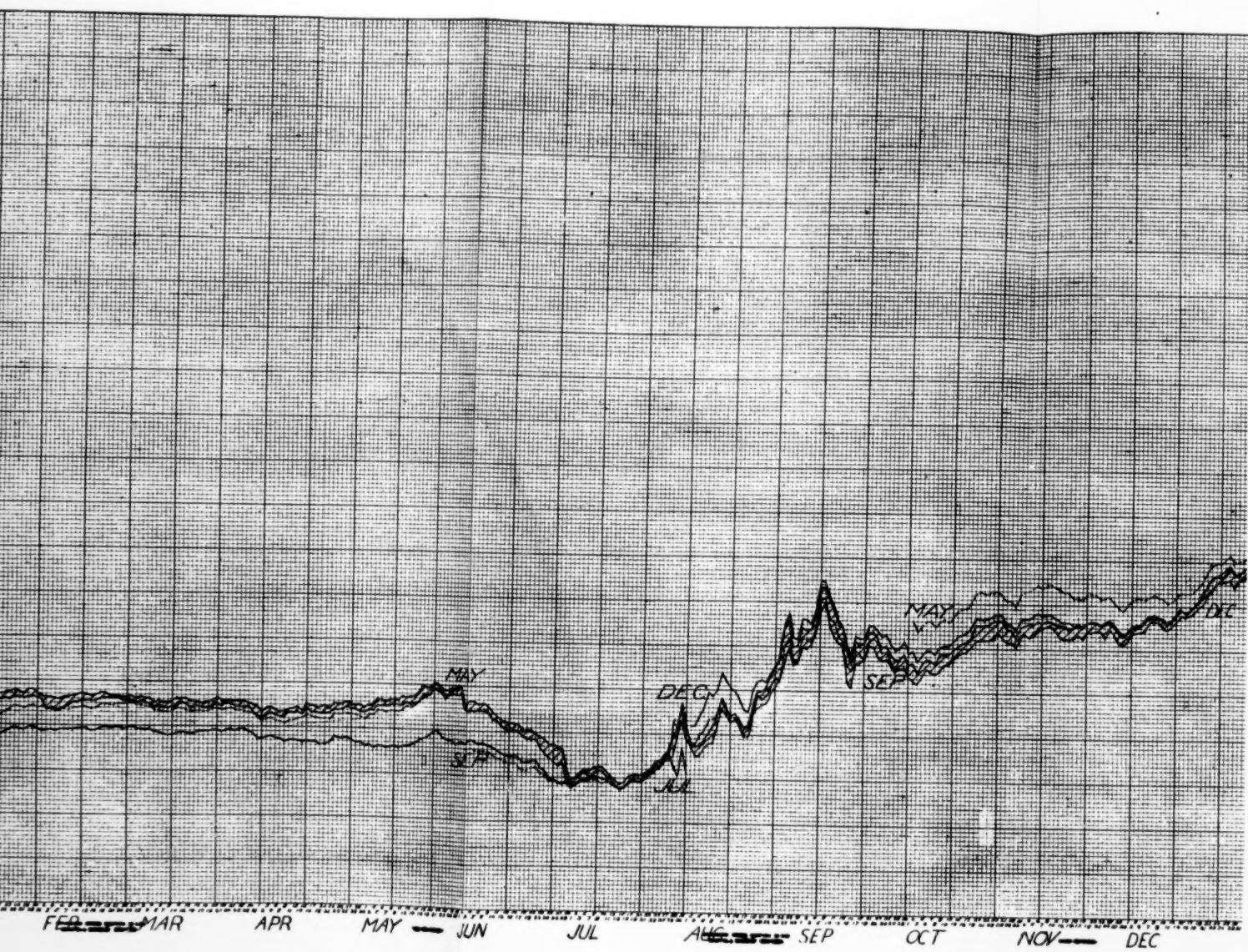


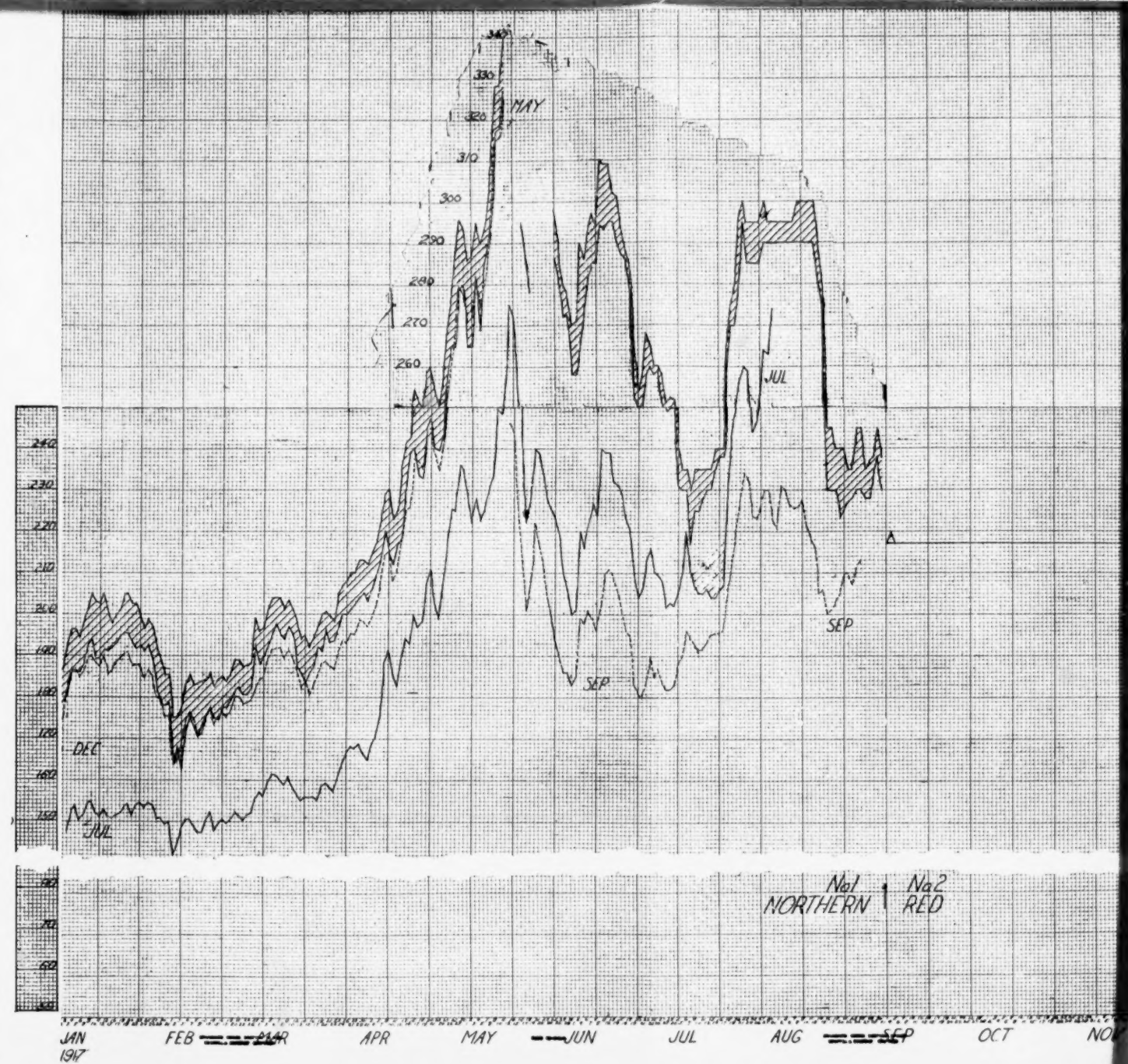
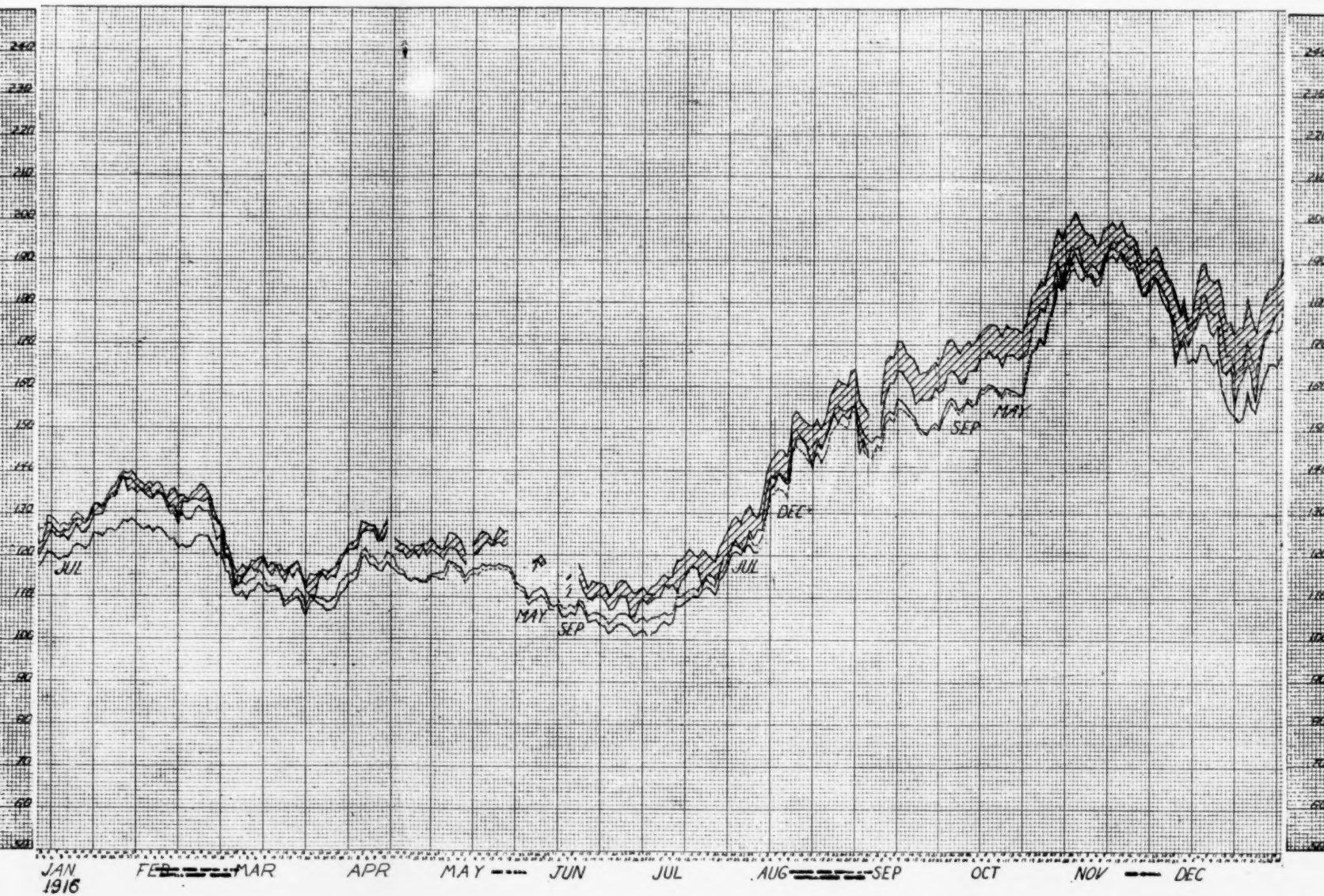


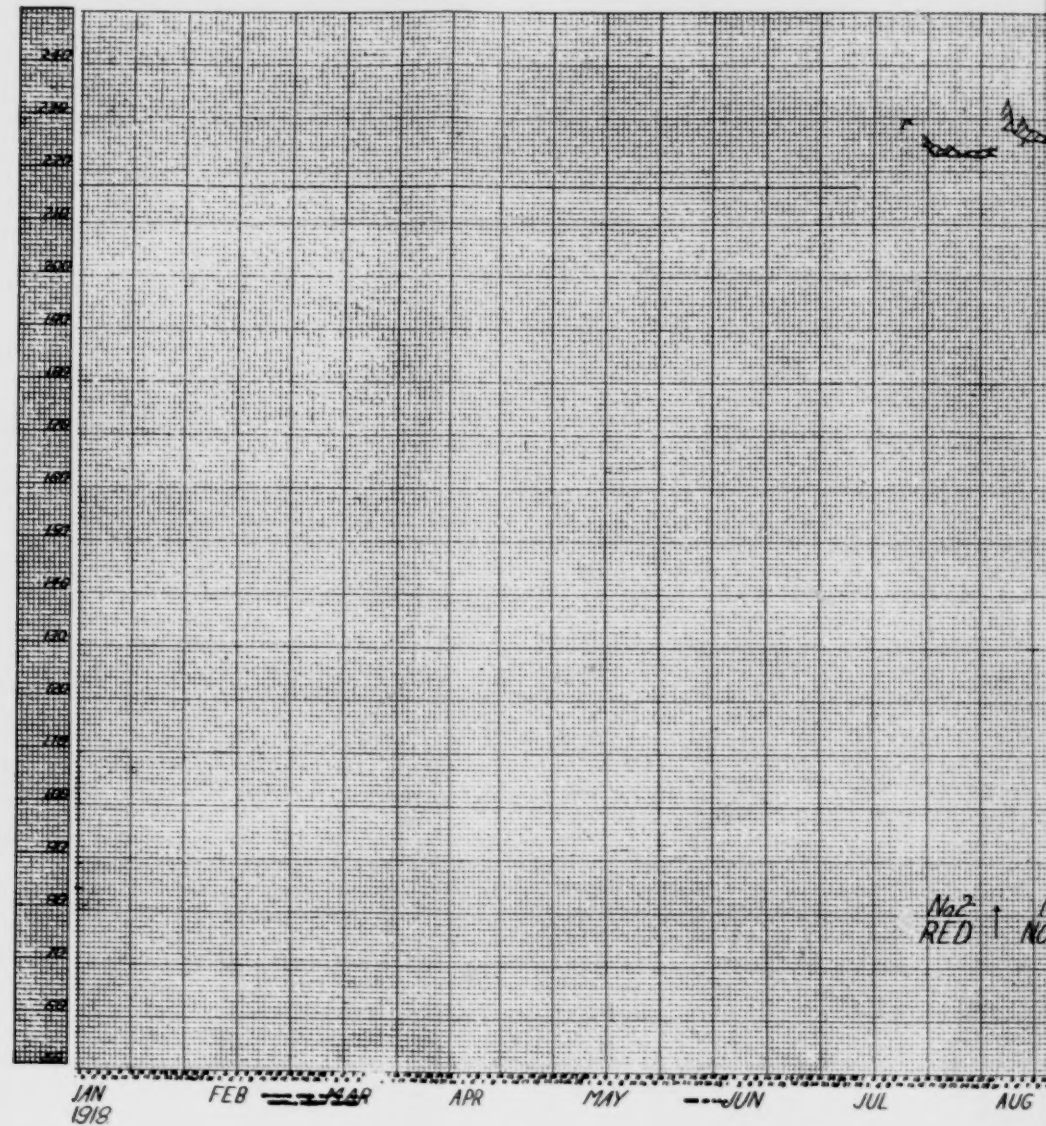
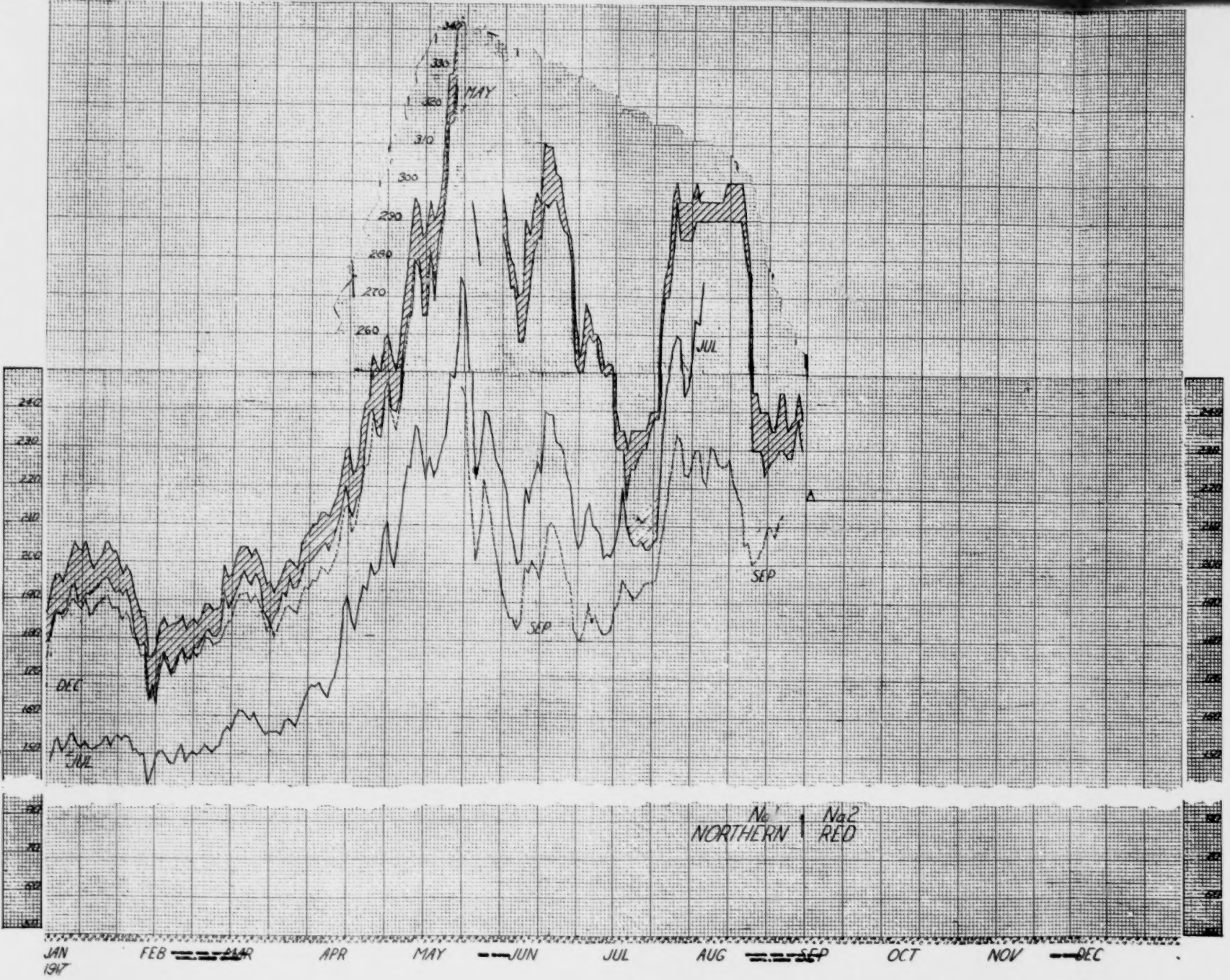
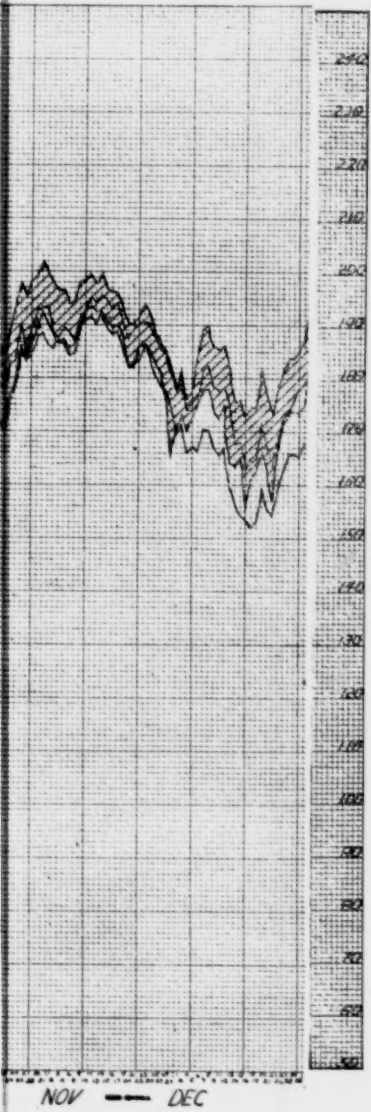


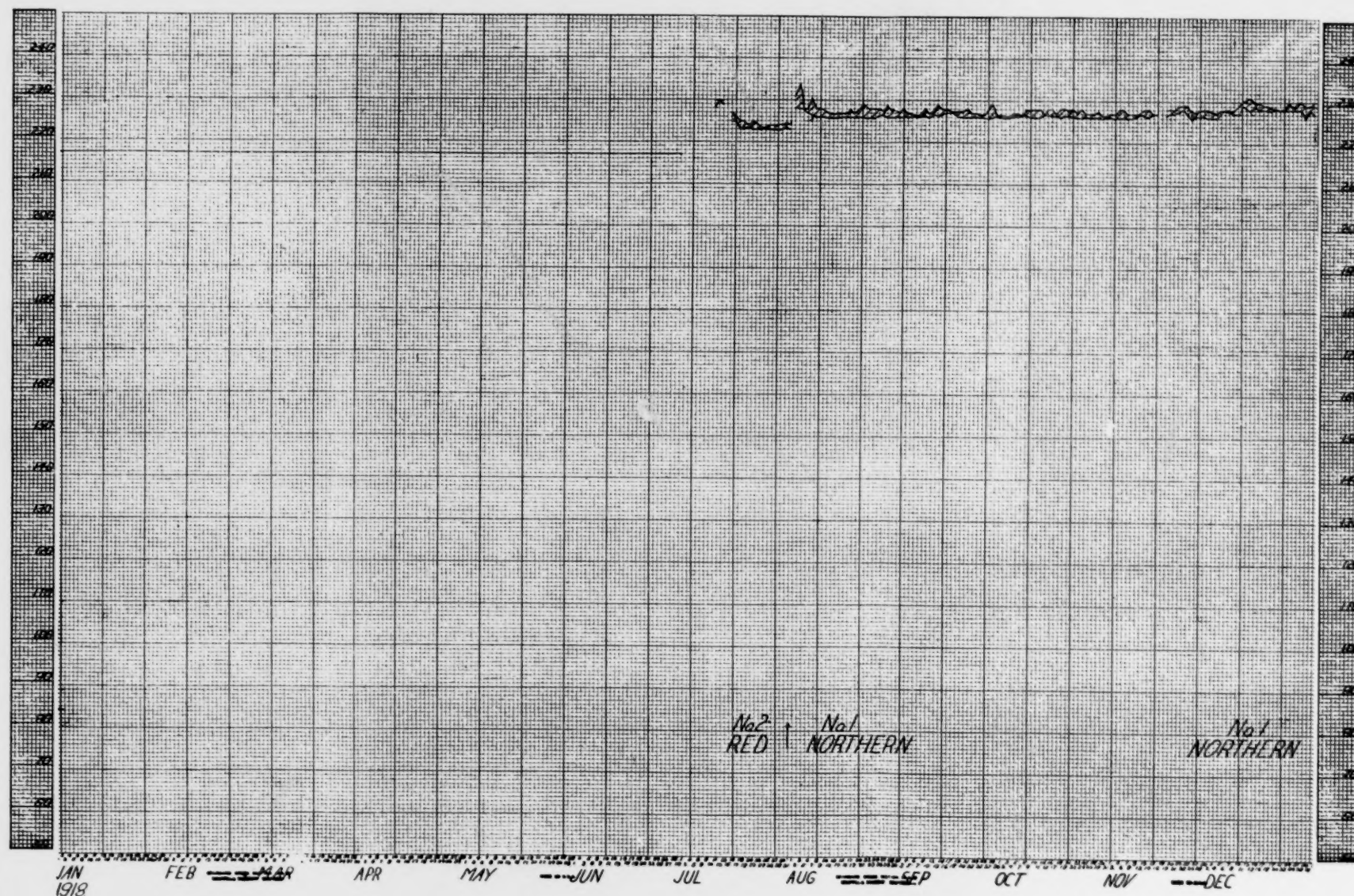
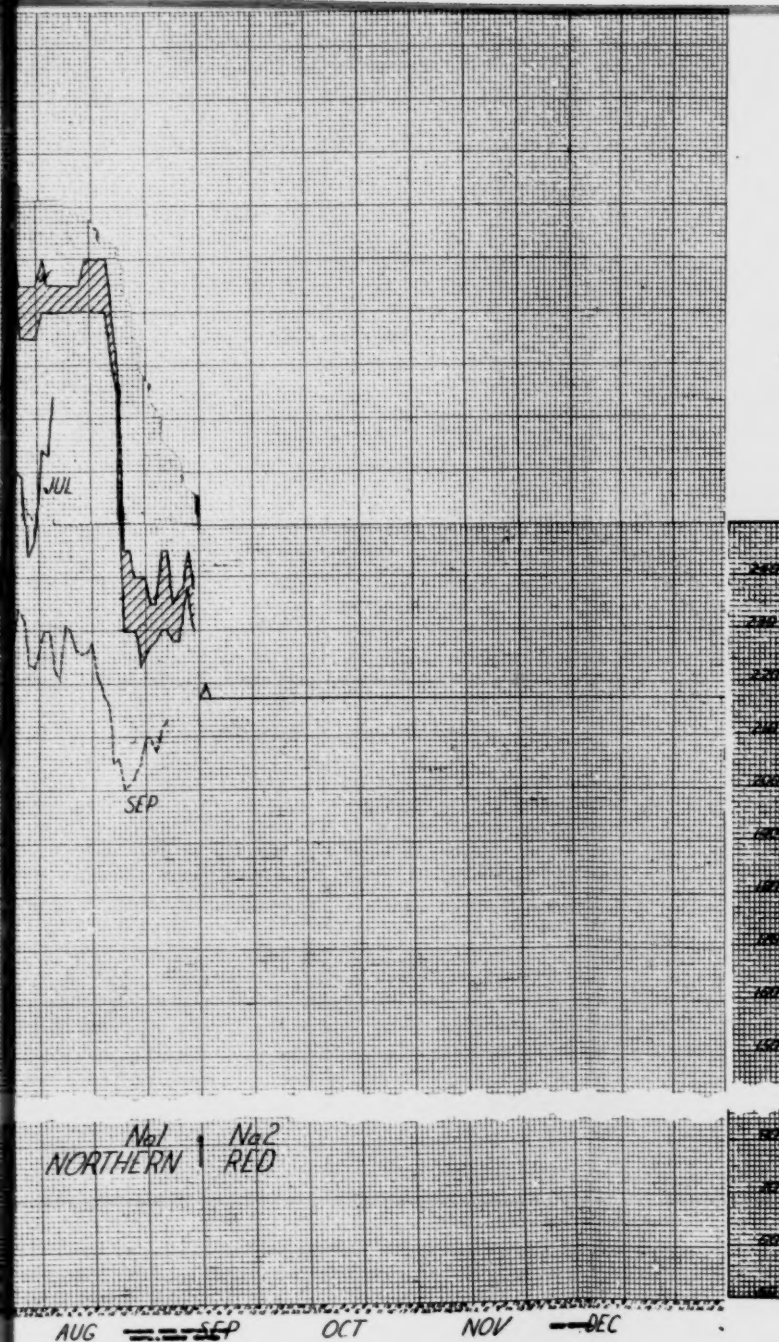


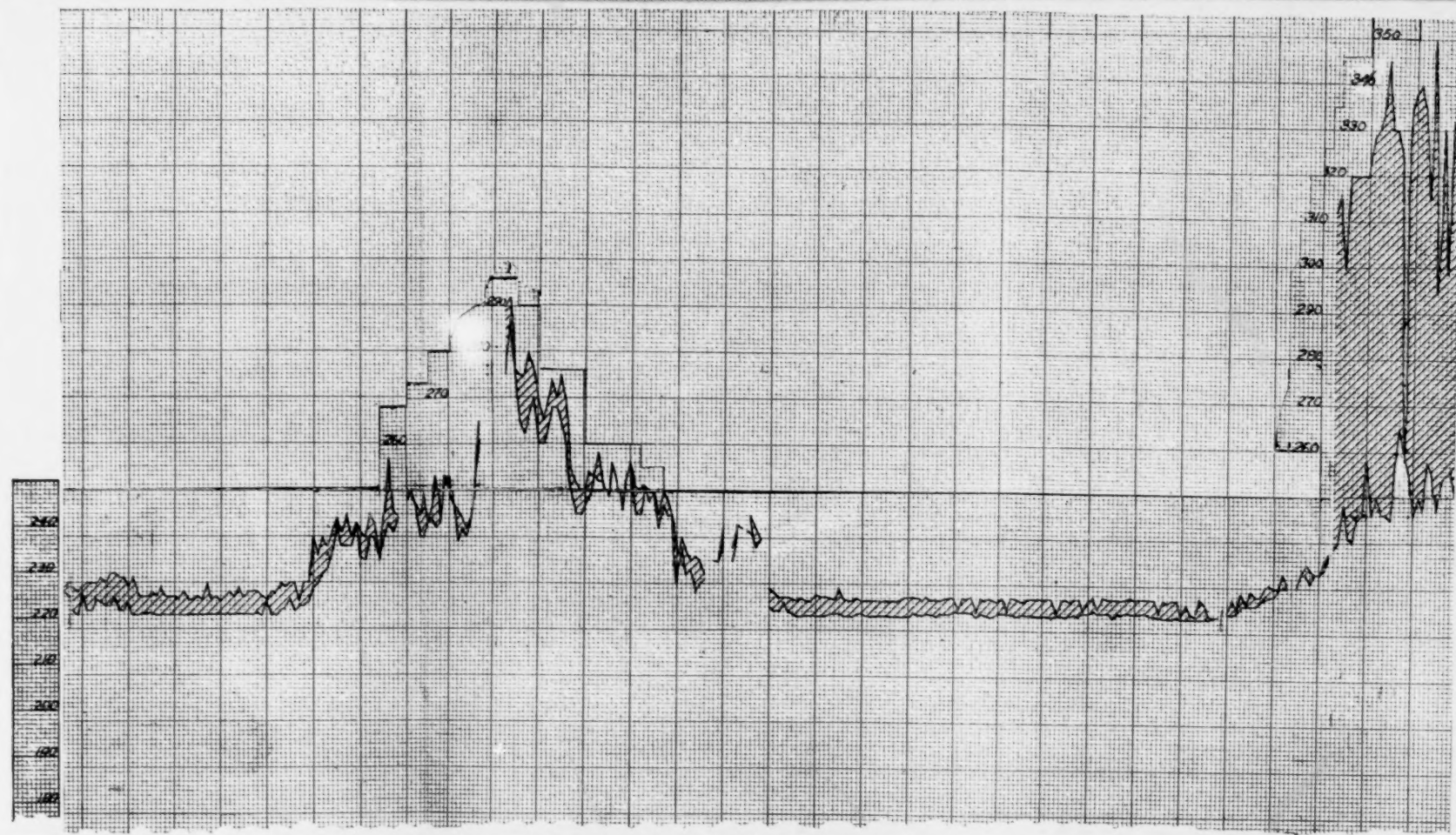




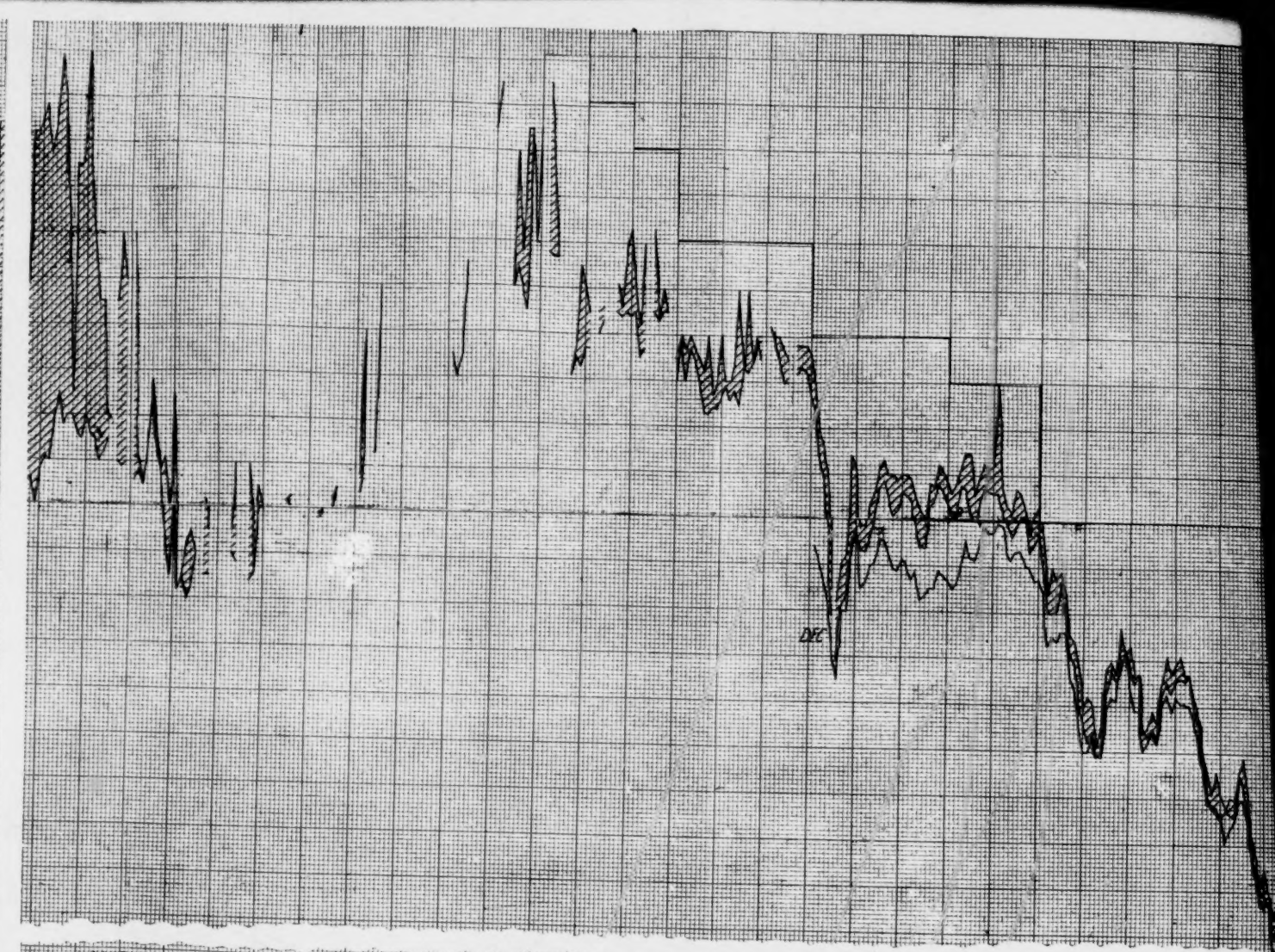




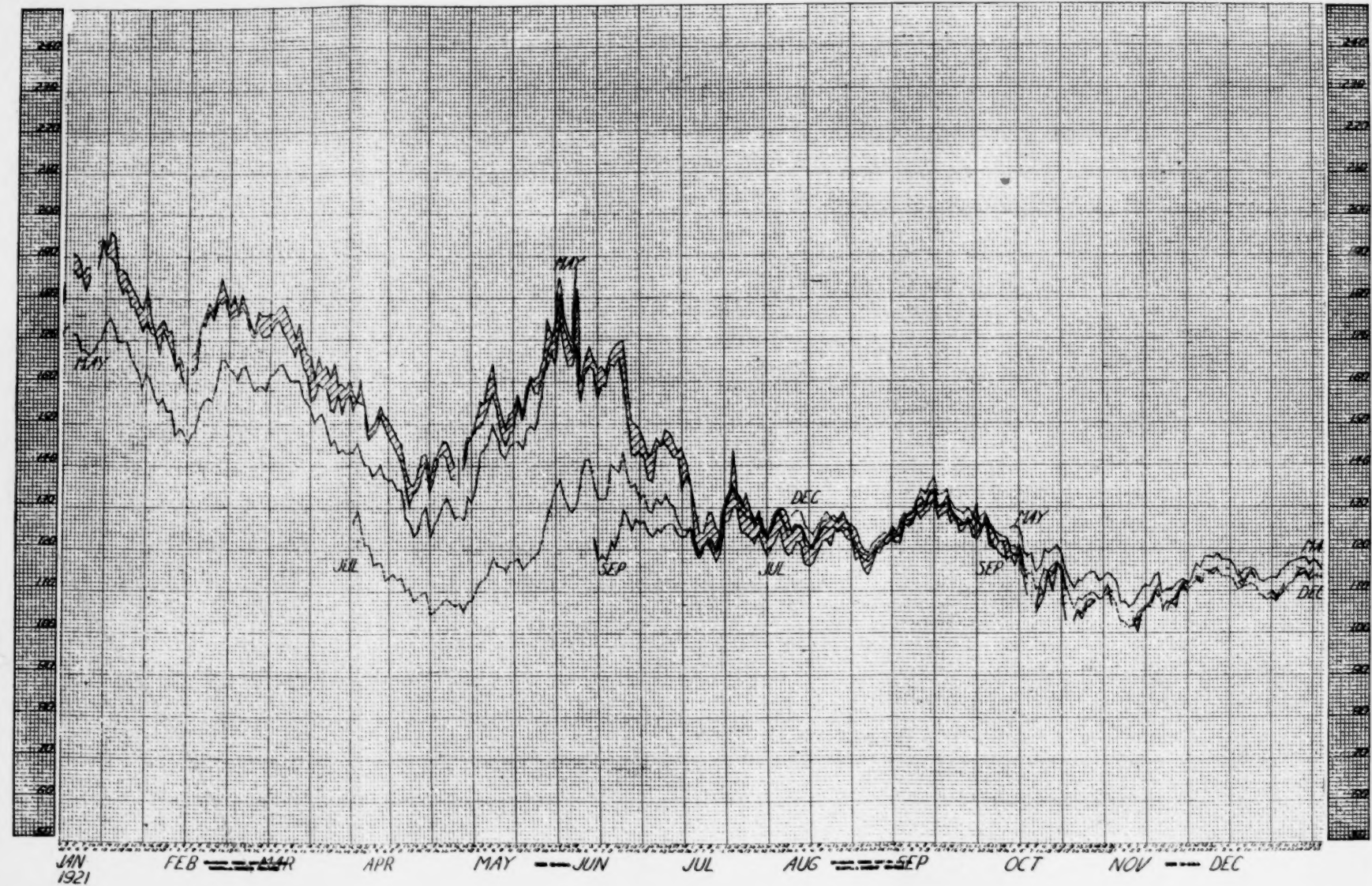
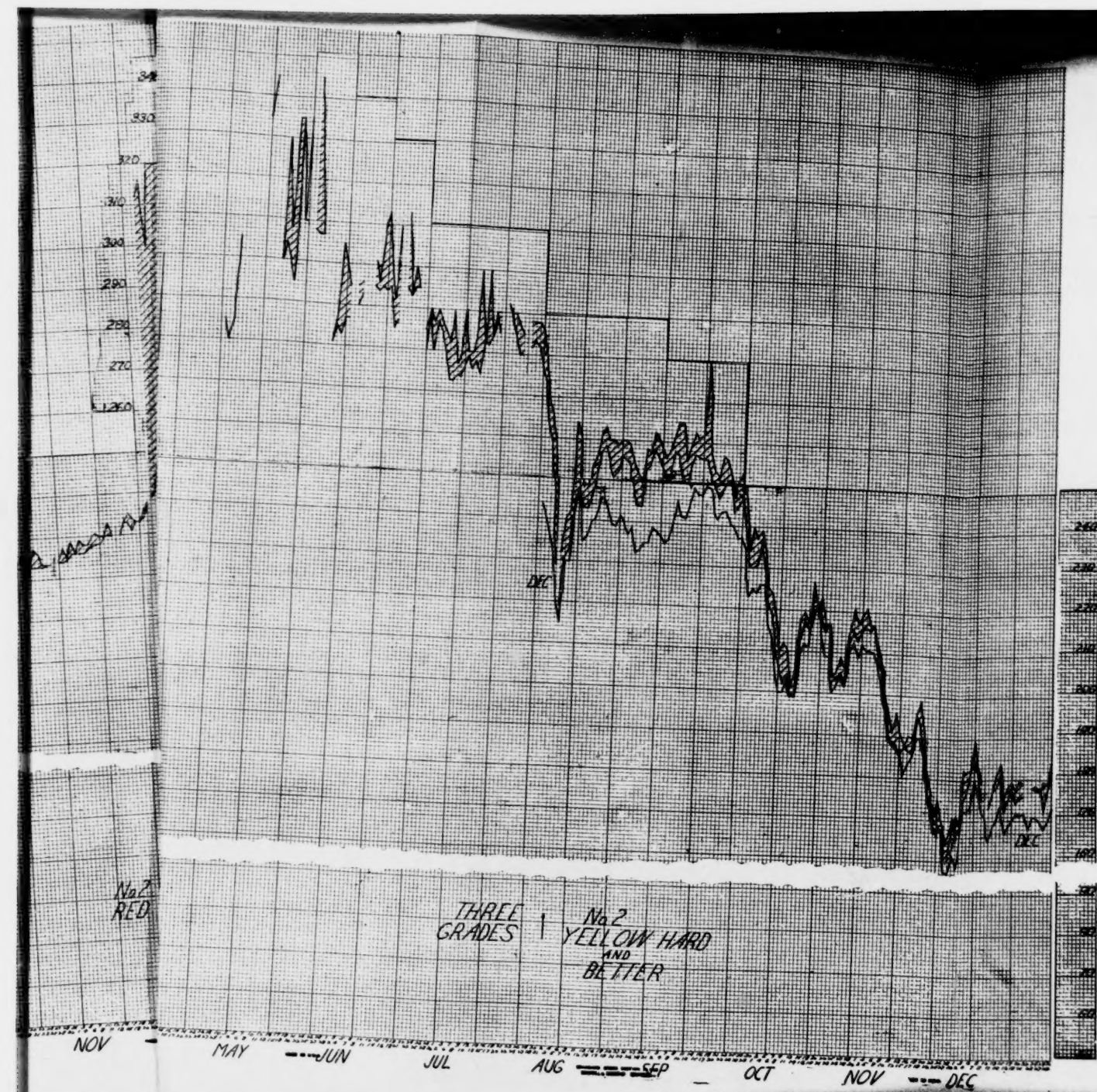




Na₂ NORTHERN AND BETTER
 Na₂ NORTHERN
 Na₂ RED AND BETTER
 Na₂ RED
 HIGHEST AND LOWEST PRICES
 JAN 1919 FEB ~~1919~~ APR MAY --JUN JUL AUG ~~1919~~ OCT NOV --DEC



Na₂ RED or Na₂ HARD Na₂ NORTHERN
 THREE GRADES
 Na₂ YELLOW HARD AND BETTER
 JAN 1920 FEB ~~1920~~ APR MAY --JUN JUL AUG ~~1920~~ SEP OCT NOV



Duluth:

Cars to boat:

Elevation: July 1, 1909-Aug. 31, 1910... $\frac{1}{2}$ cent per bu.
 Includes 15 days free storage
 Sep. 1, 1910-June 30, 1914..... 1 cent.

Lake Marine Insurance:

April 15-May 1..... 45 cents per \$100.
 May 1-Sep. 1..... 30
 Sep. 1-Nov. 30..... 45

Weighing and Inspection..... $\frac{1}{8}$ cent per bu.

Lake Freight rates to Buffalo:

July-Nov., 1909. 1 cent to 3 cents. Average 2 cents per bu.

Season 1910...1	.....2	.....$1\frac{1}{2}$
Season 1911... $\frac{3}{4}$	.....3	.....$1\frac{1}{2}$
Season 1912... $1\frac{1}{8}$	.....4	.....$2\frac{1}{4}$
Season 1913... $1\frac{1}{8}$	.....$3\frac{3}{4}$	.....2
Season 1914... $\frac{3}{4}$	.....3	.....$1\frac{1}{2}$

81 EXHIBIT C TO THE AFFIDAVIT OF JAMES E. BOYLE,
 Showing Cash Wheat Prices in Chicago from 1841 to 1921 Both
 Inclusive.

(Here follows said exhibit, marked pages 81-93.)

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

94 And afterwards to-wit: the sixth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following, to-wit:

95 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

VS.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Fred Emerson Clark, being first duly sworn, says that he is Associate Professor of Economics and Marketing in the Northwestern University School of Commerce, and is in charge of the branch of political economy which includes the marketing of grain; that he has been, at different times, instructor of economics at the University of Arizona; assistant professor of business administration at Delaware College, and associate professor of economics at the University of Michigan; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation; and that he has written a book, published by the Macmillan Company, 1922, entitled, "Principles of Marketing."

That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the normal opera-

tion of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

FRED E. CLARK.

Subscribed and sworn to before me this 31st day of October, 1922.

[SEAL.]

A. S. PAPENGUTH,

Notary Public.

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

97 And on the same day to-wit: the sixth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit in words and figures following to-wit:

98 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

Arthur Twining Hadley, being duly sworn, says that he was for thirteen years professor of political economy in Yale University, and was in charge of the branch of political economy which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges reflect actual supply and demand influences.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain, as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, are relatively infrequent; that the general tendency of such future trading has not been, as a rule, detrimental to the producer or the consumer, but that it has tended to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges is an assistance to interstate commerce instead of an obstruction hereto or burden thereon.

Further affiant saith not.

ARTHUR TWINING HADLEY.

Subscribed and sworn to before me this 4th day of November, 1922.

[SEAL.]

EDNA MAY RUTZ,
Notary Public.

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

100 And on the same day to-wit: the sixth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit in words and figures following to-wit:

101 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

Henry W. Farnam, being duly sworn, says that he is Professor Emeritus of economics in Yale University.

That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with occasional exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

Further affiant saith not.

HENRY W. FARNAM.

Subscribed and sworn to before me this 4th day of November, 1922.

[Notarial Seal.]

EDNA MAY RUTZ,
Notary Public.

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

102 And on to-wit: the sixth day of November, 1922, there was filed in the Clerk's office of said court a certain affidavit, in words and figures following to-wit:

103 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

Fred Rogers Fairchild, being duly sworn, says that he is Professor of political economy in Yale University, and Chairman of the department of political economy, being the department which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

104 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

105 Further affiant saith not.

FRED ROGERS FAIRCHILD.

7-701

Subscribed and sworn to before me this 4th day of November, 1922.

[Notarial Seal.]

EDNA MAY RUTZ,
Notary Public.

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

106 And on to-wit: the sixth day of November, 1922, there was filed in the Clerk's office of said court a certain affidavit, in words and figures following to-wit:

107 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complain-
ants,

VS.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

Thomas S. Adams, being duly sworn, says that he is professor of political economy in Yale University; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

108 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges are, with infrequent and minor exceptions, the result of competitive forces of supply and demand, and that the general course of such prices is in no material degree affected by manipulation of prices on grain future exchanges.

That this affiant is further of the opinion that violent or unreasonable fluctuations in prices of grain do not frequently occur as the result of manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not in the aggregate detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and hold fluctuations in grain prices within a narrower compass or spread than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed but facilitates and gives precision to the operation of the normal forces of supply and demand, and that neither such future trading nor such fluctuations in prices

of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

THOMAS S. ADAMS.

Subscribed and sworn to before me this 4th day of November, 1922.

[Notarial Seal.]

EDNA MAY RUTZ,
Notary Public.

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
State of New York,
County of Westchester, ss:

Roswell C. McCrea, being duly sworn, says that he is professor of economics in the School of Business of Columbia University, the curriculum of which includes a consideration of the marketing of grain, and the problems associated therewith, including future trading and speculation; that he graduated from Haverford College with the degree of A. B. in 1897, that he received the degree of A. M. from Cornell in 1900, and the degree of Ph. D. from the University of Pennsylvania in 1901, that he was instructor of Economics at Trinity College in 1902-03, that he was Professor of Economics and Sociology at Bowdoin College in 1903-07, that he was Associate Director of the New York School of Philanthropy from 1907-1911 where he taught Economics, that he was Professor of Economics at the University of Pennsylvania from 1911-1916, and Dean of the Wharton School of Finance and Commerce from 1912 to 1916, that he was Secretary of the Academy of Political Science for three years.

That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with temporary exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future

exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

113

Further affiant saith not.

ROSWELL C. McCREA.

Subscribed and sworn to before me this 31st day of October, 1922.
(Notarial Seal) CHARLES S. DANIELSON,

Notary Public.

Notary Public, Westchester County.

Certificate, New York County No. 91, New York Register No. 3090.
Term Expires March 30, 1923.

(Endorsed:) Filed November 6, 1922. John H. R. Jamar, Clerk.

114 And on to-wit: the tenth day November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following, to-wit:

115 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,

State of New York,

County of New York, ss:

Joseph French Johnson, being duly sworn, says that he is Dean of New York University School of Commerce and Professor of Po-

litical Economy in New York University, and in charge of the branch of political economy which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

MURRAY ELLMAN, [Notarial Seal.]
Notary Public, N. Y. Co., No. 5.

N. Y. Register's No. 3038.

116 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

JOS. FRENCH JOHNSON.

Subscribed and sworn to before me this 2nd day of November, 1922.

MURRAY ELLMAN, [Notarial Seal.]
Notary Public.

Notary Public, N. Y. Co. No. 5.
 N. Y. Register's No. 3038.

(Endorsed:) Filed Nov. 6, 1922. John H. R. Jamar, Clerk.

117 And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain affidavit, in words and figures following to-wit:

118 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Abbott Payson Usher, being duly sworn, says that he is Assistant Professor of political economy in Harvard University, and in charge of the branch of political economy which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation. That he has written the following:

History of the Grain Trade in France, 1400-1700. Harvard U Press;

Technique of Medieval & Modern Produce Markets (wording of title from memory). Journal of Political Economy;

Influence of Speculation on Prices. American Economic Review, and others.

119 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted

operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

120 Further affiant saith not.

ABBOTT PAYSON USHER.

MIDDLESEX,

Cambridge, Mass., ss:

Subscribed and sworn to before me this eighth day of November, 1922.

[Notarial Seal.]

GEORGE McCRAM,

Notary Public.*

*My commission expires April 14, 1927.

(Endorsed: Filed Nov. 10, 1922. John H. R. Jamar, Clerk.

121 And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

122 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Thomas N. Carver, being duly sworn, says that he is Professor of political economy in Harvard University, and in charge of the branch of political economy known as the Economics of Agriculture, which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation, that he is the author of books entitled Principles of Rural Economics, The Distribution of Wealth, Principles of National Economy, and several others.

123 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do at any given time reflect the actual supply and demand influences, in so far as they are known at the time to the best experts, and that such prices are, with infrequent and minor exceptions, determined by open and competitive buying and selling, and that manipulation of prices of grain, either for present or future delivery, is therefore impossible except in the rare, and increasingly rare cases known as cornering the market.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation, manipulation or control of prices, and that such fluctuations as do occur in the prices of grain bought and sold for future delivery are, in the main, due to new information regarding the conditions of demand and supply, that such fluctuations cannot be detrimental to the producer and the miller at the same time, the loss to one being offset by a gain to the other, unless it can be shown that the spread between the price received by the producer and the price paid by the miller is widened as the result of such speculation or such buying and selling of grain for future delivery, that there is no evidence to show that the spread between the price received by the producer and the price paid by the miller is
124 thereby widened, but on the contrary, the evidence seems to show that this spread is reduced and that this has been the general tendency for several decades.

That this affiant is further of the opinion that fluctuations in the price of grain are not increased in violence or frequency as the result of speculation or buying and selling for future delivery, but that on the contrary, such buying and selling for future delivery have a marked tendency to stabilize market prices of grain and to cause the fluctuations in the prices of grain to become less sudden and less violent than they would otherwise be, and less sudden and less violent than they were before such future trading became a practice on the exchanges.

And that this affiant is further of the opinion that the buying and selling of grain for future delivery on the exchanges do not result in and have the effect of causing the price of grain to be abnormally depressed on the one hand or abnormally raised on the other, nor to be other than such as results from the unrestricted operation of the normal forces of supply and demand, as those are understood by expert buyers and sellers at the time, and that neither such future trading nor any fluctuations in prices of grain as might conceivably occur as the result of such future trading are an obstruction to or burden upon interstate commerce in grain or in the products or by products thereof.

Further affiant saith not.

THOMAS N. CARVER.

Subscribed and sworn to before me this 8th day of November, 1922.
[Notarial Seal.]

HUGH LESTER,

Notary Public.

(Endorsed:) Filed Nov. 10, 1922. John H. R. Jamar, Clerk.

125 And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

126 In the District Court of the United States, Northern District of Illinois Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

VS.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Allyn A. Young, being duly sworn, says that he is Professor of political economy in Harvard University, and in charge of the branch of political economy which includes the study of organized exchanges; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

127 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not generally detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction

128 to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

ALLYN A. YOUNG.

MIDDLESEX,
Cambridge, Mass., ss:

Subscribed and sworn to before me this eighth day of November, 1922.

[SEAL.]

GEORGE W. CRAM,
Notary Public.

My commission expires April 14, 1927.

(Endorsed:) Filed Nov. 10, 1922. John H. R. Jamar, Clerk.

129 And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit in words and figures following to-wit:

130 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Melvin T. Copeland, being duly sworn, says that he is Professor of Marketing in Harvard University, and in charge of the course of instruction in the Graduate School of Business Administration which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation; and that he has written a text book, entitled "Marketing Problems," which is used as a standard text in Harvard University and other institutions.

131 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate com-

merce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

MELVIN T. COPELAND.

MIDDLESEX,

Cambridge, Mass., ss:

Subscribed and sworn to before me this eighth day of November, 1922.

[SEAL.]

GEORGE W. CRAM,

Notary Public.

My commission expires April 14, 1927.

(Endorsed:) Filed Nov. 10, 1922. John H. R. Jamar, Clerk.

And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit in words and figures following to-wit:

In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,

District of New Jersey, ss:

Frank A. Fetter, being duly sworn, says that he is a professor of political economy in Princeton University, and has given particular attention to the study of markets, of price changes and of price theory.

That he is of the opinion that the organized grain exchanges constitute the best agency that has yet been devised for reflecting at one time and place the manifold influences that go to make up true market prices whether for cash or future sales; and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that

the general course of prices on grain future exchanges is not properly to be explained as due to manipulation.

That this affiant is further of the opinion that there is widespread misunderstanding as to the effect that trading in grain for future delivery does or can have upon prices of grain sold for immediate delivery; that these two prices, or sets of prices, relate to different periods of time with all their differing conditions; that groups of commodities physically alike and sold at the same time but deliverable at two different times, are virtually two different commodities for the purpose of the price-making process, though related to each other as in the case of any two commodities that can be substituted for each other within limits; that sudden fluctuations in the prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges; that such future trading, merely reflecting the forecasts and opinions of traders as to conditions, is not to be charged with causing the fluctuations or with any resulting detriment to producers, to consumers, or to dealers; that future trading in grain has a marked tendency to stabilize the movement of
 136 cash prices and to cause fluctuations to become less sudden and less violent than they were before such future trading became a practice upon such exchanges; and that the selling of grain for future delivery on the exchanges does not cause the average annual cash prices of grain to be depressed, but that such prices result from the ordinary operation of supply and demand.

Further affiant saith not.

FRANK A. FETTER.

Subscribed and sworn to before me this 6th day of November, 1922.

[SEAL.]

CHARLES E. VAN MARTER,

Notary Public for N. J.

(Endorsed:) Filed Nov. 10, 1922. John H. R. Jamar, Clerk

137 And on to-wit: the tenth day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit in words and figures following to-wit:

138 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

STATE OF NEW YORK,

County of Tompkins, ss:

James E. Boyle, being duly sworn, says that in the preparation of the five-year chart showing cash prices of grain in six markets,

which is attached to the affidavit heretofore made by this affiant in the above entitled cause, the Chicago prices indicated on said chart are the prices for No. 2 Red Winter Wheat, with the exception of the period from July 1, to July 15, 1909, when the price is for No. 1 Northern Spring Wheat; and that the Kansas City prices indicated on said chart are also for No. 2 Red Winter Wheat; and the New York prices thereon indicated are for No. 2 Red Winter Wheat f. o. b. ship at New York; and that the prices indicated on said chart for Winnipeg and Minneapolis are the prices for No. 1 Northern Spring Wheat; and that the price of No. 1 Spring Wheat is normally above the price of winter wheat because of the superior milling qualities which said spring wheat has.

Further affiant saith not.

JAMES E. BOYLE.

Subscribed and sworn to before me this 6th day of November, 1922.

[SEAL.]

JOHN G. GUDMUNDSEN,
Notary Public.

(Endorsed:) Filed Nov. 10, 1922. John H. R. Jamar, Clerk.

139 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

140 In the District Court of the United States, Northern District of Illinois, Eastern Division,

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,

State of New York,

County of New York, ss:

Charles J. Bullock, being duly sworn, says that he is professor of political economy in Harvard University, and in charge of the branch of political economy which relates to industry and commerce, including the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future ex-

changes has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur
141 as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, with an orderly system of marketing grain, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

CHARLES J. BULLOCK.

Subscribed and sworn to before me, this 9th day of November, 1922.

[Notary Seal.]

JOHN F. HENDRICKSON,
Notary Public.

Notary Public, Kings County #25.
Certificate Filed N. Y. County Clerk's — #567.
N. Y. Co. Register's Office 3281.
Commission Expires March 30, 1923.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamaar, Clerk.

142 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

143 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

VS.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
State of New York,
County of New York, ss.:

Wesley C. Mitchell, being duly sworn, says that he is Professor of Economics in Columbia University; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

144 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not frequently detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become more frequent but also less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

145 Further affiant saith not.

WESLEY C. MITCHELL.

Subscribed and sworn to before me this 8 day of November, 1922.

[SEAL.]

JOHN GROENER,
Notary Public.

Notary Public, New York County.
New York County Clerk's No. 224.
New York Register's No. 4092.
Commission expires March 30th, 1924.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

146 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

147 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
State of New York,
County of Westchester, ss:

John Bates Clark, being duly sworn, says that he is, and has been since 1895, professor of Political Economy in Columbia University; and director of the Division of Economics and History of the Carnegie Endowment for International Peace since 1911; that he was a member of the Hughes Commission for Investigating Exchanges and that he is the author of works on Value and on the Distribution of Wealth; that he gives as his opinion the following:

148 In my opinion the free buying and selling of grain on the exchanges for future delivery has a steadying effect on the market. Were there no such dealing either on the exchanges or elsewhere, a short crop of wheat would at first be sold at too low a price. At the beginning of the season of the year following the harvest it would be consumed too freely and would command a scarcity price at the end of the year. An opposite effect would be created in the case of a large crop. In both cases the result of speculation involving the actual delivery of the grain bought and sold tends to lessen injurious fluctuations of price and cause the entire year's supply to command a rate that is less variable and more normal than it would otherwise be. No manipulations can annul this tendency.

And further affiant saith not.

JOHN B. CLARK.

Subscribed and sworn to before me this tenth day of November, 1922.

[SEAL.]

CHARLES S. DANIELSON,
Notary Public.

Notary Public Westchester County.
Certificate New York County No. 91,
New York Register No. 3090.
Term expires March 30, 1923.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

149 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

150 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

Edwin R. A. Seligman, being duly sworn, says that he is McVicker Professor of Political Economy, and head of the Department of Economics at Columbia University of New York; that he has occupied a number of positions as advisory expert on economic questions of various official and governmental committees, commissions, and departments, local, state, and national; that he now occupies an official position as consulting expert on certain economic questions to an important committee of the League of Nations; that he is past president of the American Economic Association, of the National Tax Association, of the American Association of University Professors; that he is the American correspondent of the Royal British Economic Society and the American member of several other European learned associations; that his instruction includes the field of political economy which deals with the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and of the marketing problems associated therewith, including future trading and speculation; that he has treated of these subjects in his books, several of which have been translated into various European languages, including French, German, Spanish, Italian, Russian, Japanese, and Chinese; that he has read and carefully considered all the testimony taken at the hearings on future trading before the committees on agriculture of the House and Senate in 1921, preliminary to the passage of the

Grain Futures Act, and that he finds the overwhelming weight of evidence in that testimony to bear out the conclusions set forth below.

That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do in general reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations of prices in grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such rare fluctuations as do occur in prices in such future trading, due to manipulation or control, are of an entirely ephemeral character, without any permanent influence on either producer or consumer or the persons handling the grain or the products or by-products thereof in interstate commerce; that such rare fluctuations of prices due to manipulation or control, are far more than outweighed by the influence of the so-called hedging or trading in futures, which constitute the overwhelming mass of speculative transactions in grain

and which have, on the contrary, had a marked tendency to
 152 stabilize market prices of grain and cause fluctuation in grain prices to become less sudden and less violent than they were before such future trading became a practice on such exchanges; and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor, as a rule and with infrequent and minor exceptions, to be other than such as result from the unrestricted operation of the natural law of supply and demand; and that neither such future trading nor such fluctuations in prices of grain, as do occur therein are an obstruction to, or burden upon, interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

EDWIN R. A. SELIGMAN.

Subscribed and sworn to before me this sixth day of November, 1922.

[Notarial Seal.]

GERTRUDE D. STEWART,

Notary Public, #45.

Commission expires March, 1923.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

153 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain affidavit, in words and figures following to-wit:

154 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Pennsylvania, ss:

Robert Riegel, being duly sworn, says that he is Professor of the branch of political economy which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

155 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

156 Further affiant saith not.

ROBERT RIEGEL.

Subscribed and sworn to before me this 6th day of November, 1922.
[SEAL.]

GEO. E. NITZSCHE,

Notary Public.

Notary Public.

Commission Expires January 18, 1925.

(Endorsed:) Filed November 13, 1922. John H. R. Jamar, Clerk.

157 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

158 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,

District of Pennsylvania, ss:

S. S. Huebner, being duly sworn, says that he is Professor in Organized Security and Produce Exchange Markets and political economy in the University of Pennsylvania, and in charge of the branch of political economy which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

159 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect approximately actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to

be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

S. S. HUEBNER.

Subscribed and sworn to before me this 6th day of November, 1922.

[SEAL.]

GEORGE E. NITZSCHE,

Notary Public.

Notary Public.

Commission Expires January 18, 1925.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

161 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

162 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Pennsylvania, ss:

Grover G. Huebner, being duly sworn, says that he is Professor of Commerce and Transportation in the University of Pennsylvania, and in charge of the branch of political economy which includes the marketing of grain; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

163 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such

fluctuations as do occur in prices in such future trading are not detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that on the contrary such future trading has had a tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are an obstruction to or burden upon interstate
 164 commerce in grain or in the products or by-products thereof.

Further affiant saith not.

GROVER G. HUEBNER.

Subscribed and sworn to before me this 6 day of Nov., 1922.
 [Notarial Seal.]

WALTER K. TAYLOR,
Notary Public.

Walter K. Taylor, 3425 Woodland Avenue.
 Commission expires January 4th, 1925.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

165 And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

166 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants

v.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

I, Irving Fisher, being duly sworn, says that he is Professor of political economy in Yale University; that he has made a study of the production, exchange, and distribution of wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

167 That he is of the opinion that the prices of grain bought and sold on the organized grain exchanges do reflect actual supply and demand influences, and that such prices are, with infrequent and minor exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain

future exchanges has in general, little material effect on the general course of such prices.

That this affiant is further of the opinion that sudden or unreasonable fluctuations in prices of grain do not frequently occur as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and that such fluctuations as do occur in prices in such future trading are not usually detrimental to the producer or the consumer or the persons handling grain or the products or by-products thereof in interstate commerce, and that, on the contrary, such future trading has had a marked tendency to stabilize market prices of grain and cause fluctuations in grain prices to become less sudden and less violent than they were before such future trading became a practice upon such exchanges, and that the selling of grain for future delivery on the exchanges does not ordinarily result in or have the effect of causing the prices of grain to be abnormally depressed nor to be other than such as result from the unrestricted operation of the natural law of supply and demand, and that neither such future trading nor such fluctuations in prices of grain as do occur therein are ordinarily an obstruction to or burden upon interstate commerce in grain or in the products or by-products thereof.

Further affiant saith not.

IRVING FISHER.

Subscribed and sworn to before me this 8th day of November, 1922.

[Notarial Seal.]

M. A. PRENTISS,
Notary Public.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

And on to-wit: the 13th day of November, 1922, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit:

In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

Edwin Walter Kemmerer, being duly sworn, says that he is Professor of Economics and Finance in Princeton University; that he has made a study of the production, exchange and distribution of

wealth in the United States and the marketing problems associated therewith, including future trading and speculation.

171 That he is of the opinion that the general price movements of grain bought and sold on the organized exchanges (aside from temporary oscillations which are usually of minor proportions) reflect actual supply and demand influences, and that such price movements are, with infrequent exceptions, based on the open competitive factors of supply and demand, and that manipulation of prices on grain future exchanges has no material effect on the general price movements, although it frequently is a factor in causing temporary oscillations.

That this affiant is further of the opinion that substantial declines or advances of an enduring character rarely, if ever, occur, under modern exchange conditions, as the result of speculation or manipulation or control of prices in transactions in future trading upon such exchanges, and he believes that future trading has a marked tendency to stabilize market prices of grain in the sense of causing such fluctuations as take place to be less violent than they were before such future trading became a practice upon such exchanges, and he believes that the selling of grain for future delivery on the exchanges does not result in or have the effect of causing the prices of grain to be abnormally depressed, nor to average lower throughout the year than they would if such future trading upon the exchanges were abolished.

172 Further affiant saith not.

EDWIN WALTER KEMMERER.

Subscribed and sworn to before me this 6th day of November, 1922.

[SEAL.]

CHARLES E. VAN MARTER,
Notary Public for N. J.

(Endorsed:) Filed Nov. 13, 1922. John H. R. Jamar, Clerk.

173 And afterwards on, to wit, the 17th day of November, 1922, this matter coming on to be heard, the following Decree was entered by the Court:

174 In the District Court of the United States, Northern District of Illinois, Eastern Division.

Friday, November 17, 1922.

Present: Honorable George A. Carpenter, District Judge.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Decree.

This cause came on to be heard at this term on a motion for a temporary injunction (but not upon final hearing on bill and answer), and was argued by counsel, thereupon, upon consideration thereof, now

It is ordered That the motion for a temporary injunction be denied; and

It is further ordered, adjudged and decreed, upon the court's own motion, that the bill be dismissed as to all the defendants for want of equity.

17 Nov. 1922.

CARPENTER,
Judge.

175 And on, to wit, the 17th day of November, 1922, came the complainants by their solicitors and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

176 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Petition for Allowance of Appeal.

The Board of Trade of the City of Chicago, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser and Alonzo B. Lord, complainants in the above entitled cause, conceiving themselves to be aggrieved by the decree of this court entered on the 17th day of November, 1922, dismissing the above entitled suit, do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignments of error this day filed herein, and they pray that this

appeal may be allowed and that a transcript of the record and all proceedings herein be forthwith transmitted to said court, and that the temporary restraining order issued herein be continued in force for the purpose of enabling said complainants to apply to the Supreme Court of the United States for the further continuance of said restraining order.

BOARD OF TRADE OF THE CITY OF
CHICAGO,

JOHN HILL, Jr.,
REUBEN G. CHANDLER,
ADOLPH KEMPNER,
EMIL W. WAGNER,
ALFRED V. BOOTH,
EDWARD L. GLASER,
ALONZO B. LORD,

By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) Filed Nov. 17, 1922. John H. R. Jamar, Clerk.

178 And on, to wit, the 17th day of November, 1922, came the complainants by their solicitors and filed in the Clerk's office of said Court a certain Assignments of Error, in words and figures following, to wit:

179 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,
vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Assignments of Error.

Now come the complainants, the Board of Trade of the City of Chicago, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser and Alonzo B. Lord, and file the following assignments of error upon which they rely for grounds for reversal on the appeal in the above entitled cause:

1. That the District Court erred in dismissing said suit for want of equity.

2. That the District Court erred in not entering a decree pursuant to the prayer of said bill.

3. That the District Court erred in not granting a temporary injunction as prayed in said bill.

4. That the District Court erred in not adjudging and decreeing that said Grain Futures Act is void in toto because it violates the Constitution of the United States.

5. That the District Court erred in not adjudging and decreeing Section 4 of said Act, in so far as it seeks to restrict the use
180 of the mails, void because not within the power conferred on Congress to establish post office and post roads.

6. That the District Court erred in not adjudging and decreeing to be void Section 4 of said Act in so far as it seeks to prohibit the transmission by telegraph, telephone, wireless, or other means of communication any offer to make or execute or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, because not within the commerce power of Congress, and because it violates Section 2 of Article IV of the Constitution of the United States.

7. That the District Court erred in not adjudging to be void so much of Section 4 of said Act as prohibits, and by Section 9 of said Act punishes, the making of any contract for the future delivery of grain, except when made by or through a member of a board of trade which shall have been designated a "contract market," as provided in said Section, upon the ground that such provision as applied to future trading on the Board of Trade of the City of Chicago undertakes to regulate commerce which is wholly intrastate in character.

8. That the District Court erred in not adjudging to be void Section 5 of said Act upon the ground that the provisions of said Section are not within the commerce power of Congress.

9. That the District Court erred in not adjudging to be
181 void Section 6 of said Act upon the ground that the provisions of said Section are not within the commerce power of Congress.

10. That the District Court erred in not adjudging to be void sub-clause (b) of Section 6 in that it seeks to deprive members of said Board of Trade of their liberty without due process of law, by making the violation of any of the provisions of said Act, and any attempt to manipulate the market price of grain, crimes, and constituting the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, a Commission for the trial of such persons as shall be accused of such crimes, with power, as a punishment therefor, to deprive such offenders of their right to thereafter pursue a lawful vocation; whereas such criminal laws are, under the Constitution, enforceable only in courts created by law and presided over by judges holding office during good behavior.

11. That the District Court erred in not adjudging to be void sub-clause (b) of Section 6 of said Act as violative of Section 2 of Article III of the Constitution and the 6th Amendment thereto, in that it creates a crime and provides for a criminal prosecution therefor without according to the accused the right of trial by jury, and the right to be confronted with the witnesses against him.

12. That the District Court erred in not adjudging said Act violative of the 5th Amendment to the Constitution, and void, in that it seeks to compel members of said Board of Trade and their customers to furnish evidence which may be used in a criminal case against them.

13. That the District Court erred in not decreeing that so much of Sections 4, 5, 6 and 9 of said Act as make the records of transactions for the future delivery of grain kept by any person open to
182 the inspection of any representative of the United States Departments of Agriculture and Justice, void, because violative of the 4th and 5th Amendments to the Constitution in that it authorizes unreasonable searches respecting books and papers, which do not relate to any transaction within the commerce power of Congress, and authorizes the inspection of books and papers in order to secure evidence to be thereafter used in criminal proceedings under said Grain Futures Act against the owners of such books and papers.

14. That the District Court erred in not decreeing that sub-clause (c) of Section 5 of said Act, and the other provisions of said Act which provide for the enforcement of said sub-clause (c), to be void and in violation of the 5th Amendment to the Constitution in that such provisions deprive such Board of Trade and its members of their exclusive right to use their private property, and because said provisions will impair the value of such property and all memberships of said Board of Trade.

15. That the District Court erred in not adjudging said sub-clause (e) of Section 5 of said Act, and the other provisions enforcing said sub-clause (e), void, because in violation of the 5th Amendment to said Constitution in that it attempts, by forcing representatives of farmers' co-operative associations into membership of said Board of Trade, to take the private property of said Board of Trade and its members for public use without just compensation therefor.

16. That the District Court erred in not adjudging said Act void
183 in that it attempts to regulate commerce which is not interstate but purely intrastate in character.

17. That the District Court erred in not adjudging said Act void in that it is class legislation and deprives members of exchanges of the right to contract for the purchase of grain for future delivery as others may.

BOARD OF TRADE OF THE CITY OF
CHICAGO,

JOHN HILL, JR.,
REUBEN G. CHANDLER,
ADOLPH KEMPNER,
EMIL W. WAGNER,
ALFRED V. BOOTH,
EDWARD L. GLASER,
ALONZO B. LORD.

By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) Filed Nov. 17, 1922. John H. R. Jamar, Clerk.

184 And afterwards on, to wit, the 17th day of November, 1922, this matter coming on to be heard, the following order was entered by the Court:

185 In the District Court of the United States, Northern District of Illinois, Eastern Division.

Friday, November 17, 1922.

Present: Honorable George A. Carpenter, District Judge.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

Order.

Now come the complainants, and it appearing to the court that a petition for appeal and assignments of error have been filed herein,

It is ordered that an appeal to the Supreme Court of the United States from the decree entered herein on the 17th day of November, 1922, be and the same is allowed, that for the purpose of enabling said court to decide said appeal a transcript of record herein be forthwith transmitted to said court, and that complainants file their appeal bond in the sum of five hundred (\$500) dollars, to be signed by said Board of Trade and a surety to be approved by this court, and that the temporary restraining order heretofore issued herein continue in force until the Supreme Court shall act upon the application of the complainants to that court for a further continuance of said order, provided, however, that such application shall be made not later than November 27, 1922.

CARPENTER,

Judge.

17 Nov., 1922.

186 And on, to wit, the 17th day of November, 1922, came Board of Trade of the City of Chicago, as principal, and C. H. Canby as surety, and filed in the office of the Clerk of said Court a certain Bond on Appeal in words and figures following, to wit:

187 Know all men by these presents: That we, the Board of Trade of the City of Chicago, as principal, and C. H. Canby, as surety, are held and firmly bound unto Charles F. Clyne, United States District Attorney for the Northern District of Illinois, Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United States Postmaster at the City of Chicago, in the full and just sum of Five Hundred (\$500) Dollars, to be paid to said Charles F. Clyne, United States District Attorney for the Northern

District of Illinois, Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United States Postmaster at the City of Chicago, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of November, A. D. 1922.

Whereas, lately, at the November term, A. D. 1922, of the District Court of the United States for the Northern District of Illinois, in a suit pending in said court between the Board of Trade of the City of Chicago, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser and Alonzo B. Lord, as complainants, and said Charles F. Clyne, United States District Attorney for the Northern District of Illinois, Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United States Postmaster at the City of Chicago, as defendants, a decree was entered on the 17th day of November, 1922, dismissing said bill for want of equity, and said Board of Trade

188 of the City of Chicago, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser and Alonzo B. Lord have obtained an order of appeal from said court to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Charles F. Clyne, United States District Attorney for the Northern District of Illinois, Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United States Postmaster at the City of Chicago, citing and admonishing them to appear in the Supreme Court of the United States within thirty days from the date of said citation. Now the condition of the above obligation is such that if the said Board of Trade of the City of Chicago, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser and Alonzo B. Lord shall duly prosecute their appeal with effect, and answer all damages and costs if they shall fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

[Corporate Seal.]

BOARD OF TRADE OF THE CITY OF
CHICAGO,

By ROBERT McDOUGAL,

[SEAL.]

Its President, and

JOHN R. MAUFF,

[SEAL.]

Its Secretary.

C. H. CANBY.

O. K.

CHAS. F. CLYNE,

U. S. Dist. Atty.,

By CHAS. L. SWANSON.

Approved:

CARPENTER, *Judge.*

17 Nov., 1922.

89 In the District Court of the United States, Northern District of Illinois, Eastern Division.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al., Complainants,

vs.

CHARLES F. CLYNE, United States District Attorney for the Northern District of Illinois, et al., Defendants.

To John H. R. Jamar, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You will please prepare for the purpose of appeal a certified transcript of the following portions of the record in the above entitled cause, to wit:

1. Bill of Complaint.
2. All affidavits filed by complainant in support of said Bill.
3. Order to defendants to show cause why temporary injunction should not issue, and restraining defendants from enforcing Grain Futures Act.
4. Answer of defendants.
5. Decree.
6. Petition for allowance of appeal and continuance of restraining order.
7. Order allowing appeal and continuing temporary restraining order in force until application of appellants to the Supreme Court to continue the same has been acted upon by the Supreme Court.
- 190 8. Appeal bond.
9. Assignments of error.
10. Citation.
11. Amended præcipe for record.

ROBBINS, TOWNLEY & WILD.

Received a copy, November 18, 1922.

CHARLES F. CLYNE.

(Endorsed:) Filed Nov. 18, 1922. John H. K. Jamar, Clerk.

191 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the

above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with præcipe filed in this Court in the cause entitled Board of Trade of the City of Chicago, et al., vs. Charles F. Clyne, United States District Attorney for the Northern District of Illinois, et al., Number 3046, as the same appear from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 18th day of November, A. D. 1922.

[Seal of the U. S. District Court, Northern District of Illinois, 1855.]

JOHN H. R. JAMAR,

Clerk.

192 UNITED STATES OF AMERICA, ss:

The President of the United States to Charles F. Clyne, United States District Attorney for the Northern District of Illinois; Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United States Postmaster at the City of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein the Board of Trade of the City of Chicago, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Alfred V. Booth, Edward L. Glaser, and Alonzo B. Lord are appellants and you are appellees to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George A. Carpenter, Judge of the District Court of the United States, this 17th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

GEORGE A. CARPENTER,

*United States District Judge for the
Northern District of Illinois.*

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On this 18th day of November, in the year of our Lord one thousand nine hundred and twenty-two, personally appeared Kellam Foster before me, the subscriber, A. S. Papenguth, a Notary Public in and for the County of Cook and State of Illinois, and makes oath that he delivered a true copy of the within citation to Charles F. Clyne, United States District Attorney for the Northern District of Illinois, personally, and as Attorney of record for the Appellees, Charles F. Clyne, United States District Attorney for the Northern District of Illinois, Henry C. Wallace, Secretary of Agriculture of the United States, and Arthur C. Lueder, United

States Postmaster at the City of Chicago, at or about 4:00 P. M. on November 17, 1922.

Sworn to and subscribed the 18th day of November, A. D. 1922.

[Seal of A. S. Papenguth, Notary Public, Cook County,
Illinois.]

A. S. PAPENGUTH,
Notary Public.

[Endorsed:] No. —. Supreme Court of the United States.
Board of Trade of the City of Chicago, et al., Complainants, vs.
Charles F. Clyne, United States District Attorney for the Northern
District of Illinois, et al., Defendants. Citation to the Supreme
Court of the United States.

Endorsed on cover: File No. 29,251. Northern Illinois D. C.
U. S. Term No. 701. Board of Trade of the City of Chicago,
John Hill, Jr., Reuben G. Chandler, et al., appellants, vs. Charles F.
Clyne, United States district attorney for the northern district of
Illinois; Henry C. Wallace, Secretary of Agriculture, and Arthur C.
Lueder, United States postmaster at the city of Chicago. Filed
November 20th, 1922. File No. 29,251.

(7876)

Office Supreme Court, U. S.

FILED

NOV 27 1922

WM. R. STANSBURY

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, A. D. 1922.

No. 701.

THE BOARD OF TRADE OF THE CITY OF CHICAGO
ET AL., APPELLANTS.

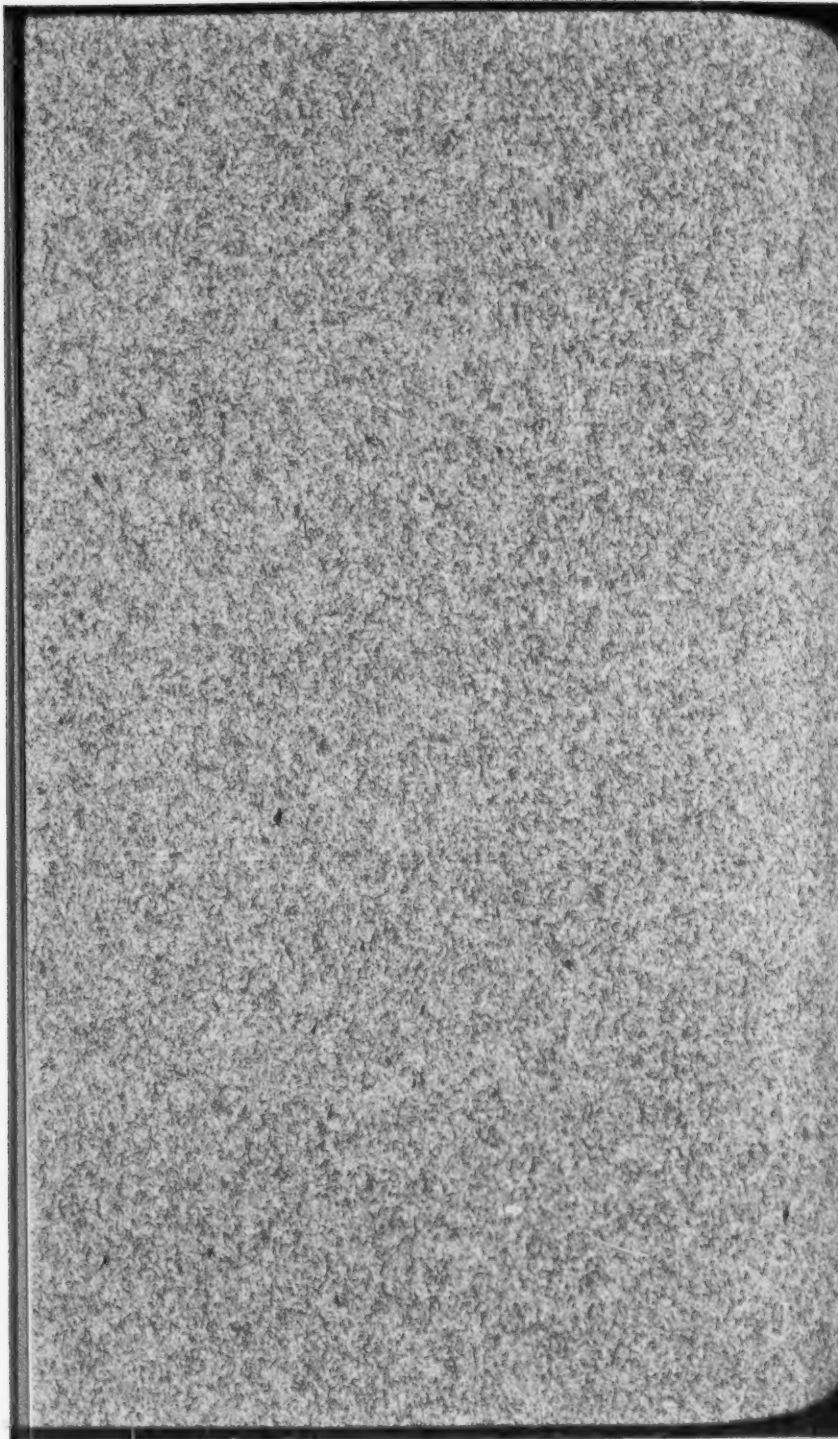
vs.

CHARLES F. CLYNE, UNITED STATES DISTRICT ATTORNEY,
ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO ADVANCE AND FOR AN ORDER PRE-
SERVING THE STATUS QUO, AND BRIEF IN SUP-
PORT THEREOF.

HENRY S. ROBBINS,
Counsel for Appellants.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, A. D. 1922.

No. 701.

THE BOARD OF TRADE OF THE CITY OF CHICAGO
ET AL., APPELLANTS,

vs.

CHARLES F. CLYNE, UNITED STATES DISTRICT ATTORNEY,
ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

NOTICE.

To the appellees in the above suit and their counsel:

Please take notice that on Monday, the 27th day of November, 1922, at 12 o'clock m., or as soon thereafter as counsel can be heard, we shall present to the court a motion to advance and for an order preserving the *status quo*, a copy

of which motion and brief in support thereof is hereto attached and served upon you.

HENRY S. ROBBINS,
Counsel for Appellants.

Received copy of above notice, motion, and brief this —
day of November, 1922.

Counsel for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1922.

No. 701.

THE BOARD OF TRADE OF THE CITY OF CHICAGO ET AL.,
Appellants,

vs.

CHARLES F. CLYNE, *United States District Attorney*, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

**MOTION TO ADVANCE AND FOR AN ORDER PRE-
SERVING THE STATUS QUO.**

Now come the appellants in the above-entitled cause, by
Henry S. Robbins, their counsel, and move the court:

(1) To advance said cause and set the same down for an
early hearing, and

(2) For an order preserving the *status quo* while this
cause is pending in this court and for twenty days thereafter
by restraining and enjoining the appellee, Charles F. Clyne,
as United States District Attorney for the Northern District
of Illinois, from attempting to enforce the act of Congress
entitled the "Grain Futures Act" during the pendency of
this cause in this court and for twenty days thereafter, and
also from at any time prosecuting criminally, or otherwise,
under said act any member of the Board of Trade of the

city of Chicago, or any customer of any such member, for, or by reason of, any violation by him or them of any provision of said act committed during the pendency of this cause in this court or twenty days thereafter, and that appellee, Arthur C. Lueder, as postmaster of the city of Chicago, be also restrained and enjoined from interfering with any of the mail passing between members of said Board of Trade and customers of said members during the pendency of this cause in this court and twenty days thereafter.

The reasons for thus preserving the *status quo* are that said Grain Futures Act is unconstitutional and within the principle established by this court in its recent decision of the case of *Hill et al. vs. Wallace et al.*, and that if said *status quo* be not preserved by an order as above suggested said Board of Trade will be compelled either to refuse to qualify as a "contract market" under said act during the pendency here of said cause, in which event all future trading on its exchange would cease, and the grain markets of the country would be thrown into disorder and confusion, or said Board of Trade, to avoid such disturbance of its and other grain markets, must make voluntary application to become a contract market, and thereby abandon its right to have said act adjudged unconstitutional.

These reasons are amplified in the brief hereto attached.

BOARD OF TRADE OF THE CITY OF
CHICAGO ET AL.,

Appellants,

By HENRY S. ROBBINS,

Their Counsel.

**BRIEF FOR APPELLANTS IN SUPPORT OF THEIR
MOTION TO ADVANCE AND FOR AN ORDER
MAINTAINING THE STATUS QUO.**

This is an appeal from a decree dismissing for want of equity a bill filed by the Board of Trade of the city of Chicago and seven of its members against the United States District Attorney and Postmaster at Chicago and the Secretary of Agriculture, to enjoin enforcement of the recent act of Congress entitled the "Grain Futures Act."

Upon the filing of the bill the District Court entered a rule to show cause why a temporary injunction should not issue and, by an order substantially in the terms mentioned in the foregoing motion, restrained the defendants from enforcing the act pending the hearing of the motion for the interlocutory injunction. Upon such hearing the District Court denied the injunction and of its own motion dismissed the bill for want of equity, that an early decision on the question of the constitutionality of said act by this court might be had.

The sole purpose of the bill being to have said act adjudged to be violative of the Federal Constitution, the District Court allowed an appeal to this court and directed that its existing temporary restraining order continue in force until this court should act upon appellants' application for a continuance of such order, provided such application should be made by November 27, 1922.

Suits similar to the present one have been filed by the other principal grain exchanges where future trading occurs,

and by agreements of the parties to such suits, they are to abide the decision of this appeal.

The importance to the public (as well as to the grain exchanges) of an early decision as to the validity of this new act is so apparent that nothing need be said upon that part of this motion, which seeks to have the case advanced.

We confine ourselves to the reasons for preserving the *status quo*.

This "Grain Futures Act" was enacted to take the place of the "Future Trading Act" which, as respects all its regulatory features, this court, in *Hill v. Wallace*, annulled because beyond the taxing and commerce powers of Congress.

This former act placed grain exchanges, where trading in grain for future delivery occurred, under the control of the Secretary of Agriculture, who was to give them designation as "contract markets" if they complied, and continued to comply, with the regulations prescribed in the act. Compliance by the exchanges with the act was enforced by a tax of 20 cents a bushel upon all contracts for the future delivery of grain, which were not made "by or through 'a member of a contract market.'"

The new act re-enacts verbatim all the regulatory provisions of the former act. Instead of forcing the exchanges to become "contract markets" by a prohibitive tax on all future contracts not made by its members upon a qualifying exchange, the present act seeks to attain the same result by imposing a penalty and imprisonment upon any person, who makes a future contract for grain otherwise than when, or through, a member of an exchange which has become a contract market.

In other words the Grain Futures Act is the same as the Future Trading Act minus the tax imposed to enforce and

plus a provision making non-compliance by members of the exchanges a crime.

The new act attempts to support its validity by reciting that manipulation upon the exchanges causes sudden and violent fluctuations in prices, which in turn constitute a burden upon interstate commerce in grain; but the bill alleges this not to be so, and this allegation is supported in this record by a chart of wheat prices in Chicago for 81 years and by the affidavits of 22 of the leading professors of political economy in Harvard, Yale, and others of our leading universities.

It is, therefore, submitted that this Board of Trade ought not, while this appeal is pending here, to be forced to elect between causing the great disorder in the grain markets—which will result from the ceasing of future trading by its members—and voluntarily complying with the act and thereby prejudicing its right to a decision of this court upon its constitutionality.

No tax is here involved, as was the case in *Hill v. Wallace*, where a stay order was entered by this court.

True the stay there was specially worded, because the suit was by six members of the exchange, and thereby their individual rights were sufficiently protected. Here the exchange itself resists *all* the provisions of the act, and the stay order should be in the terms of the motion therefor. Otherwise traders may be confused, and desist from future trading, thereby curtailing the market resorted to—especially at this season of the year—for “hedging” by those who are now buying extensively the farmers’ grains.

That the public will not suffer by this short suspension of

the act follows from the fact that this exchange and its future trading have been going on for more than fifty years without congressional control, such as this act contemplates.

Respectfully submitted,

HENRY S. ROBBINS,
Counsel for Appellants.

(7819)